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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91200832
Party	Plaintiff Briggs & Stratton Corporation
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Signature	/s/ Robert N. Phillips
Date	10/22/2013
Attachments	2013-10-22 Letter to TTAB Submitting Redacted Public Version of Corrected Phillips Declaration and Exhs 1-12.pdf(30837 bytes) [Redacted Public Version] of Corrected Declaration of Robert N Phillips in Support of Opposers' Reply Brief on MSJ.pdf(16892 bytes) Exhibits 1-12.pdf(5001927 bytes)

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October 22, 2013

ATTN: Trademark Trial and Appeal Board
Commissioner for Trademarks
Post Office Box 1451
Alexandria, VA 22313-1451

Briggs & Stratton Corporation and Kohler Co. v. Honda Giken Kogyo Kabushiki Kaisha
Opposition No. 91200832 (Parent)

Dear Sir/Madam:

We submit herewith a "Redacted Public Version" of the Corrected Declaration of Robert N. Phillips in Support of Opposers' Reply Brief on Motion for Summary Judgment which was filed with the TTAB on October 16, Dkt. No. 85. Exhibit 3 to the corrected declaration that was filed on October 16, should have been marked under seal.

We apologize for any confusion.

Very truly yours,

Robert N. Phillips

RNP:dk

cc: Counsel for Honda Giken Kogyo Kabushiki Kaisha

Enclosures

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BRIGGS & STRATTON CORPORATION and KOHLER CO., Opposers, v. HONDA GIKEN KOGYO KABUSHIKI KAISHA, Applicant.	Opposition No. 91200832 (parent) Opposition No. 91200146 Application Serial No. 78924545

CORRECTED DECLARATION OF ROBERT N. PHILLIPS IN SUPPORT OF OPPOSERS' REPLY BRIEF ON MOTION FOR SUMMARY JUDGMENT

[REDACTED PUBLIC VERSION]

I, Robert N. Phillips, declare as follows:

1. I am a partner in the law firm of Reed Smith LLP, counsel of record for Opposer Briggs & Stratton Corporation. The matters set forth herein are based upon my personal knowledge, except where otherwise indicated, and if called as a witness I could and would testify competently thereto.

2. Attached hereto as Exhibit 1 is a true and correct copy of a new press release recently published by Honda on August 6, 2013 regarding development of general purpose engines for emerging markets, available at http://world.honda.com/news/2013/ p130806General-purpose-Engines-Emerging-Markets. In paragraph 2 of the press release, Honda refers to the Proposed Mark as "a compact design that ensures compatibility with a wide range of installations."

3. Attached hereto as Exhibit 2 is a true and correct copy of U.S. Patent No. 7,104,258.

4. Attached hereto as Exhibit 3 is a true and correct copy of excerpts of the August 10, 2012 deposition in this proceeding of Steven S. Conner, Vice President of Honda's Power Equipment Division.

5. Attached hereto as Exhibit 4 is a true and correct copy of *Underwriters Laboratories Inc.*, UL 1439 "Standard for Determination of Sharpness of Edges," 4.1 (June 1, 2004) which states that "[a]n edge of an enclosure opening, frame, guard, knob, handle or the like of an appliance or equipment shall be smooth and rounded so as to not cause a cut-type injury when contacted during normal use or user maintenance."

6. Attached hereto as Exhibit 5 is Honda's description and drawing of the Proposed Mark with each of the described elements labeled for the Board's reference. In addition, Exhibit 5 presents for the Board's review a convenient guide, on an element by element basis, to Opposers' evidentiary citations regarding the functionality of the Proposed Mark.

7. Attached hereto as Exhibit 6 is a comparison of Figure 1 of the U.S. Patent Number 4,813,385 ('385 Patent) and the Proposed Mark. Also, the chart identifies numbered items 2, 3, 4, 6, and 11 depicted in Figure 1 of the '385 Patent and their corresponding appearance in the drawing of the Proposed Mark. The '385 Patent may be found at Exhibit 6 to the Daugherty Declaration in Support of Opposer's Motion for Summary Judgment dated February 1, 2013 ("Daugherty Declaration").

8. Attached hereto as Exhibit 7 is a comparison of Figure 1 of the '385 Patent and third party engines. Also, the chart identifies numbered items 2, 3, 4, 6, and 11 depicted in Figure 1 of the '385 Patent and their corresponding appearance in the third party engines. The third party engines may be found at Exhibit 24 to the Daugherty Declaration.

9. Attached hereto as Exhibit 8 is Honda's drawing of the Proposed Mark and a photograph of Honda's design changes in 2011. The labels identify the design changes that Honda contends do not alter the overall appearance of the Proposed Mark. The photograph of Honda's design changes in 2011 may be found at Exhibits 5 and 29 to the Daugherty Declaration.

10. Attached hereto as Exhibit 9 are documents from the file history of Application Serial No. 77838661, including the drawing page and the Final Action dated March 30, 2011, wherein the USPTO, citing *Textron*, rejected an application to register a back stretcher noting "a few arbitrary or otherwise nonfunctional features included with a product configuration mark do not affect a functionality determination where the evidence shows the overall design to be functional."

11. Attached hereto as Exhibit 10 are documents from the file history of Application Serial No. 8583907, including the drawing page and the Office Action dated May 23, 2013, wherein the USPTO, citing *Becton*, rejected an application to register step chair exercise equipment based upon a utility patent that did not show the exact same configuration but illuminated the purpose of the box-like frame (i.e. rest on floor and provide support).

12. Attached hereto as Exhibit 11 are documents from the file history of Application Serial No. 78254832, including the drawing page and the Office Action dated February 6, 2005, wherein the USPTO, citing *Trafix* and *Valu Engineering*, rejected an application to register a wine glass configuration finding that the presence of alternative designs does not mean that the applicant's design is not functional.

13. Attached hereto as Exhibit 12 is the first page of Kohler SH265 Service Manual showing a drawing of the front view of the SH265 Engine, the engine that Honda alleges is a knockoff of its Proposed Mark. The service manual, and a photograph of the engine, are at: (http://www.kohlerengines.com/onlinecatalog/productDetail.htm?productNumber=Courage%20SH265).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on the 16th day of October, 2013 at San Francisco, California.

By: */s/ Robert N. Phillips*
Robert N. Phillips

CERTIFICATE OF SERVICE

I hereby certified that a true and correct copy of the foregoing CORRECTED DECLARATION OF ROBERT N. PHILLIPS IN SUPPORT OF OPPOSERS' REPLY BRIEF ON MOTION FOR SUMMARY JUDGMENT [REDACTED PUBLIC VERSION] was served on the following counsel of record by depositing same in the U.S. mail, first class postage prepaid, this 22nd day of October, 2013:

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/s/ Deborah L. Kalahele
Deborah L. Kalahele

EXHIBIT 1

HONDA
The Power of Dreams

Honda Develops All-new General Purpose Engines for Emerging Markets

-Equipped on Water Pumps and Other Honda Power Products-

CHONGQING, China, August 6, 2013 - Honda announced today that it has newly developed two models of GP 4-stroke general purpose engines targeting the low-priced light-duty engine markets, which hold a large share in the general purpose engine market in emerging countries. Honda will start production of the new engines, the GP160H and GP200H,[*1] at Jialing-Honda Motors Co., Ltd.[*2] (Chongqing, China; President: Masato Saito) Honda's production and sales base for power products in China. Honda will also launch a water pump equipped with these new engines this autumn in China and other emerging countries, centering on Asia. Jialing-Honda Motors also announced today the release of a water pump equipped with the GP engine at the ceremony to commemorate its 20th anniversary and the cumulative production of 5 million power product units.

GP160H

WL30XH water pump

Honda's general purpose engines feature outstanding reliability, excellent quality, and a compact design that ensures compatibility with a wide range of installations. While inheriting these characteristics, the GP engines were developed for installation on products such as water pumps and generators used especially in emerging countries, where these products are commonly used for relatively short continuous operating times with light workloads. By equipping the GP engines on water pumps, which enjoy high demand as indispensable agricultural equipment in these countries, Honda aims to increase sales in the inexpensive, light-duty products markets in the emerging countries, an area dominated by Chinese manufacturers.

These GP series engines are the first general purpose engines developed by Honda specifically for emerging countries. With this launch, Honda aims to further increase sales of light-duty engines, which account for the bulk of 4-stroke general purpose gasoline engine sales in emerging markets (approximately 9.7 million units[*3]), thereby "helping people get things done," a vision of its power products business ever since its founding.

Honda's general-purpose engine lineup includes the following: Medium- to large-sized GX series engines, endorsed in a wide range of industries as world-standard power units for professional use on small construction equipment and agricultural machinery; the Mini 4-stroke series engines for hand-held equipment such as trimmers; and the GC series engines for home use mainly in Europe and North America.

*1 GP160H (displacement: 163 cm^3; maximum power: 3.6 kW); GP200H (displacement: 196 cm^3, maximum power: 4.1 kW)

*2 Production items include general purpose engines, water pumps, lawnmowers and tillers.

*3

EXHIBIT 1

Based on a Honda 2011 survey

● Unit sales target

(Annual total for China sales and exports, including engines installed on final products)

200,000 units

● Key features of GP engines

[Specifications suitable for light-duty use]

Fits optimal use conditions for the water pumps and generators in emerging countries (Light load output: below rated load; Operating temperature: -5 to 40°C)

[Environmental performance]

Complies with emission regulations in China

[Styling design]

A black plastic recoil cover with a white fuel tank and fan cover brings out the character of a light-duty engine

● Specifications of the New Honda GP Engine

Engine	GP160H	GP200H
Engine type	Air-cooled 4-stroke single-cylinder gasoline engine (OHV)	
Number of cylinders / bore×stroke (mm)	1/68.0×45.0	1/68.0×54.0
Displacement (cm^3)	163	196
Compression ratio	8.5:1	8.5:1
Maximum power (kW/rpm) *	3.6/3,600	4.1/3,600
Maximum torque (N·m/rpm)*	10.3/2,500	12.4/2,500
Continuous rated output (kW/rpm)	2.9/3,600	3.7/3,600
Fuel consumption (L/h) (at continuous rated output)	1.4	1.7
Fuel	Unleaded gasoline for automobiles	
Fuel tank capacity (L)	3.1	
Ignition system	Transistor magneto	
Governor system	Mechanical	
Air cleaner	Semi-dry, dual element	
Lubrication system	Forced spray	
Oil capacity (L)	0.58	0.6

Overall length (mm)	306	315
Overall width (mm)	363	378
Overall height (mm)	335	335
Dry weight (kg)	15.0	16.0
Starting system	Recoil starter	

* The power ratings of the engines indicated in the table are the net power output tested on a production engine model and measured in accordance with SAE J1349 at 3,600 rpm (maximum output) and 2,500 rpm (maximum torque). Mass production engines may vary from these values. Actual power output for the engine installed in the final product will vary depending on numerous factors including the engine speed in application, environmental conditions, maintenance and other variables.

Honda's power products business will celebrate its 60th anniversary in October 2013.

EXHIBIT 2

US007104258B2

(12) **United States Patent**
Yamada et al.

(10) **Patent No.: US 7,104,258 B2**
(45) **Date of Patent: Sep. 12, 2006**

(54) **GENERAL-PURPOSE ENGINE**

(75) Inventors: **Yoshikazu Yamada**, Saitama (JP); **Shosaku Chiba**, Saitama (JP); **Katsuya Tajima**, Saitama (JP); **Eiichi Utsugi**, Saitama (JP)

(73) Assignee: **Honda Motor Co., Ltd.**, Tokyo (JP)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 107 days.

(21) Appl. No.: **10/993,144**

(22) Filed: **Nov. 22, 2004**

(65) **Prior Publication Data**

US 2005/0121004 A1 Jun. 9, 2005

(30) **Foreign Application Priority Data**

Dec. 4, 2003 (JP) 2003-405426
Dec. 4, 2003 (JP) 2003-405428

(51) **Int. Cl.**
F02M 37/04 (2006.01)

(52) **U.S. Cl.** **123/516**; 123/518; 123/519

(58) **Field of Classification Search** 123/516, 123/518, 519, 520
See application file for complete search history.

(56) **References Cited**

U.S. PATENT DOCUMENTS

3,884,204	A	5/1975	Krautwurst et al.	
4,416,108	A *	11/1983	Ghandhi	56/17.5
4,862,856	A	9/1989	Yokoe et al.	
5,704,337	A	1/1998	Stratz et al.	
5,894,833	A	4/1999	Kikuchi et al.	

FOREIGN PATENT DOCUMENTS

JP	7-34985	2/1995

* cited by examiner

Primary Examiner—Thomas Moulis
(74) *Attorney, Agent, or Firm*—Arent Fox PLLC

(57) **ABSTRACT**

A general-purpose engine includes a canister which adsorbs fuel vapor that has evaporated within a fuel tank. The fuel vapor is desorbed from the canister and guided to an intake system communicating with an engine main body. The engine main body includes a crankcase and a cylinder block joined to the crankcase to have an upwardly inclined cylinder axis (C). The canister is disposed to one side of the crankcase and beneath the cylinder block to avoid any increase in the dimensions of the general-purpose engine.

4 Claims, 8 Drawing Sheets

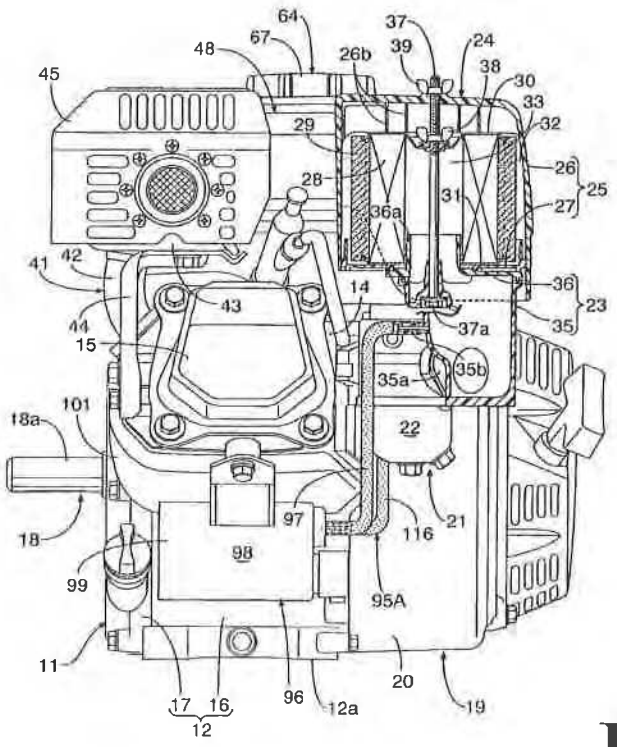

EXHIBIT 2

FIG.1

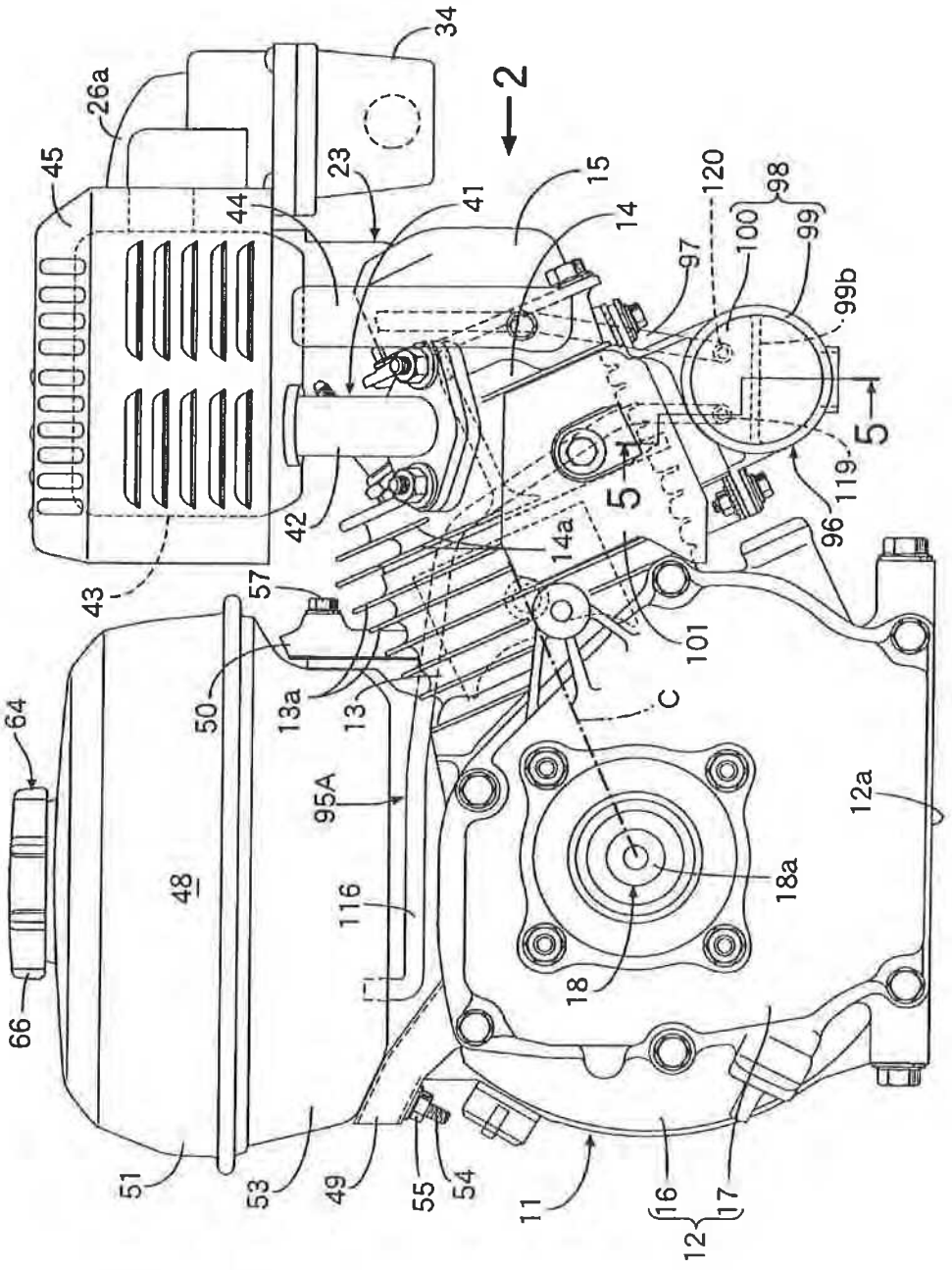
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FIG.2

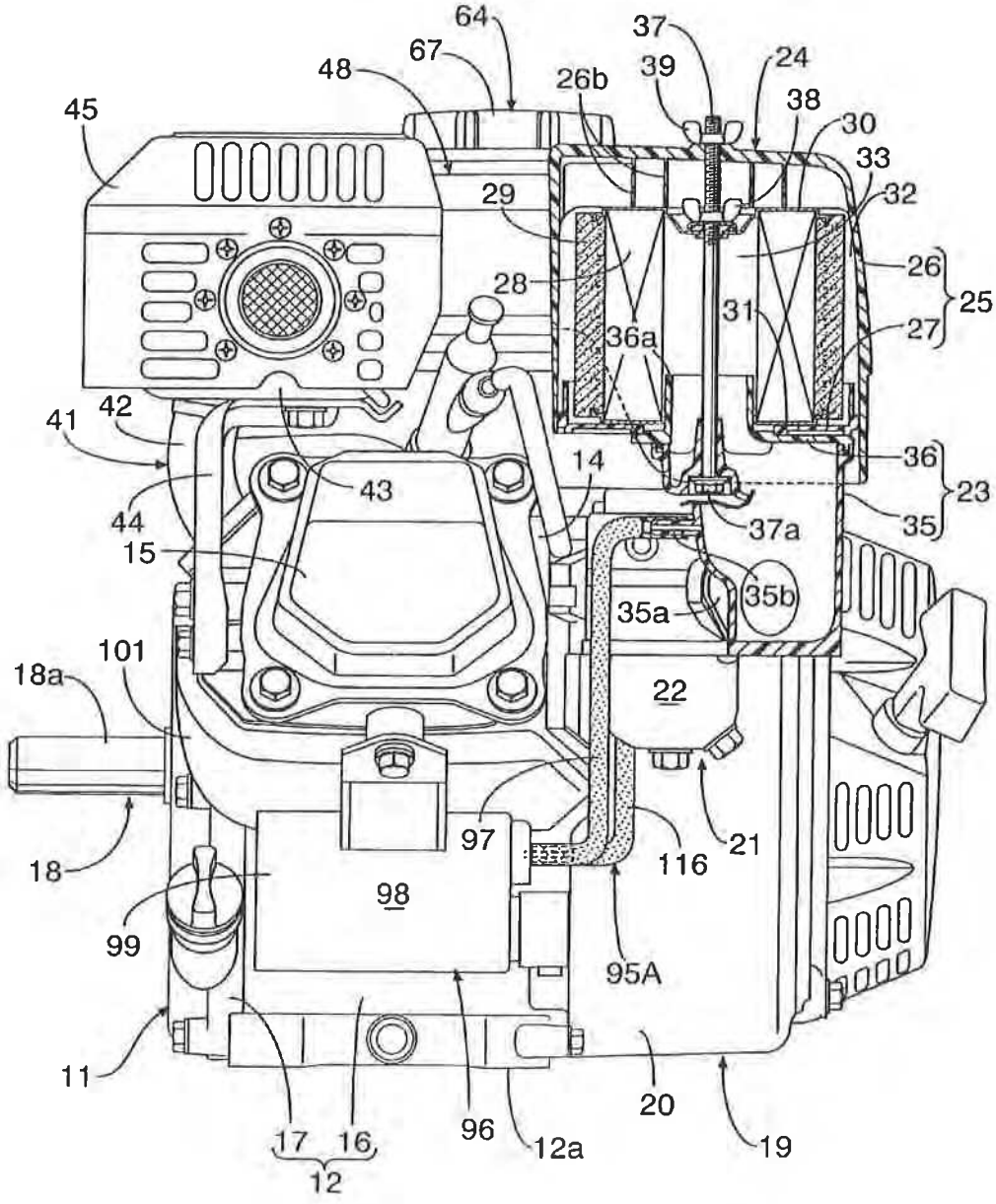
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FIG.3

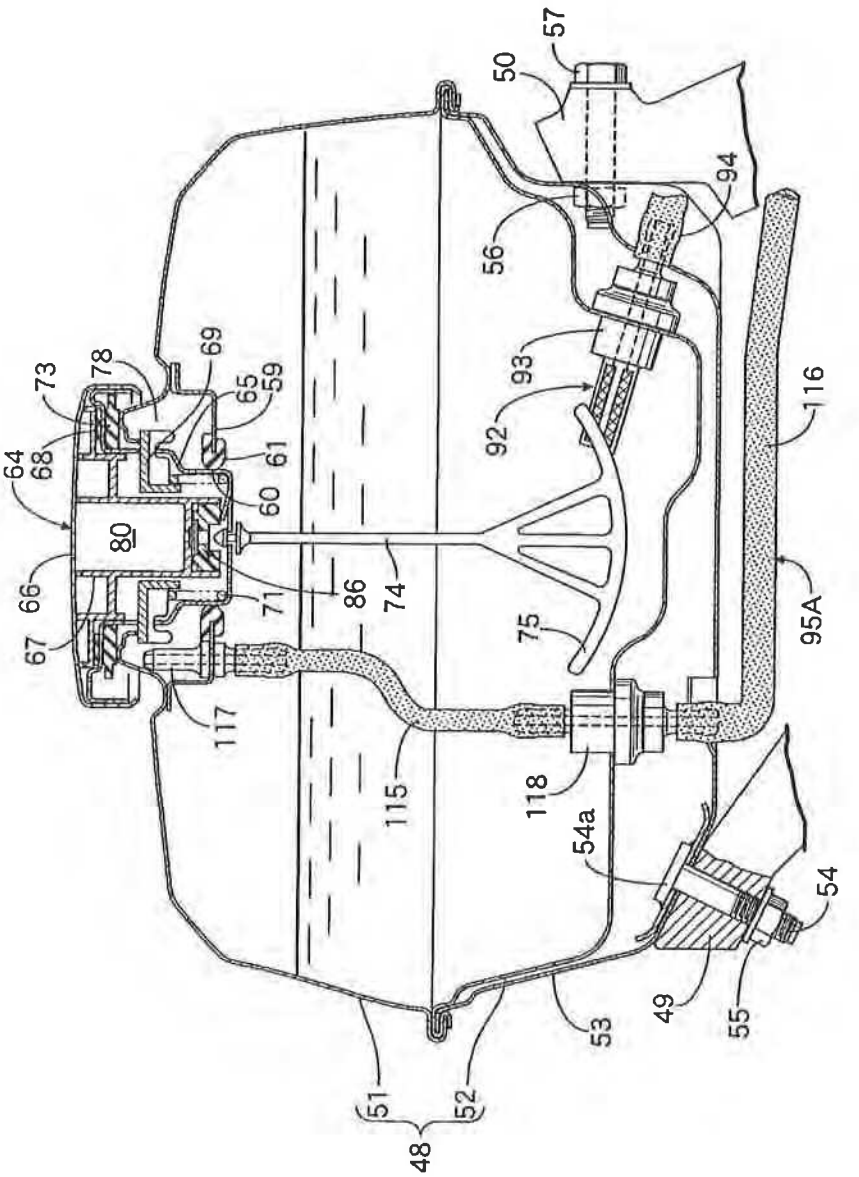
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FIG.4

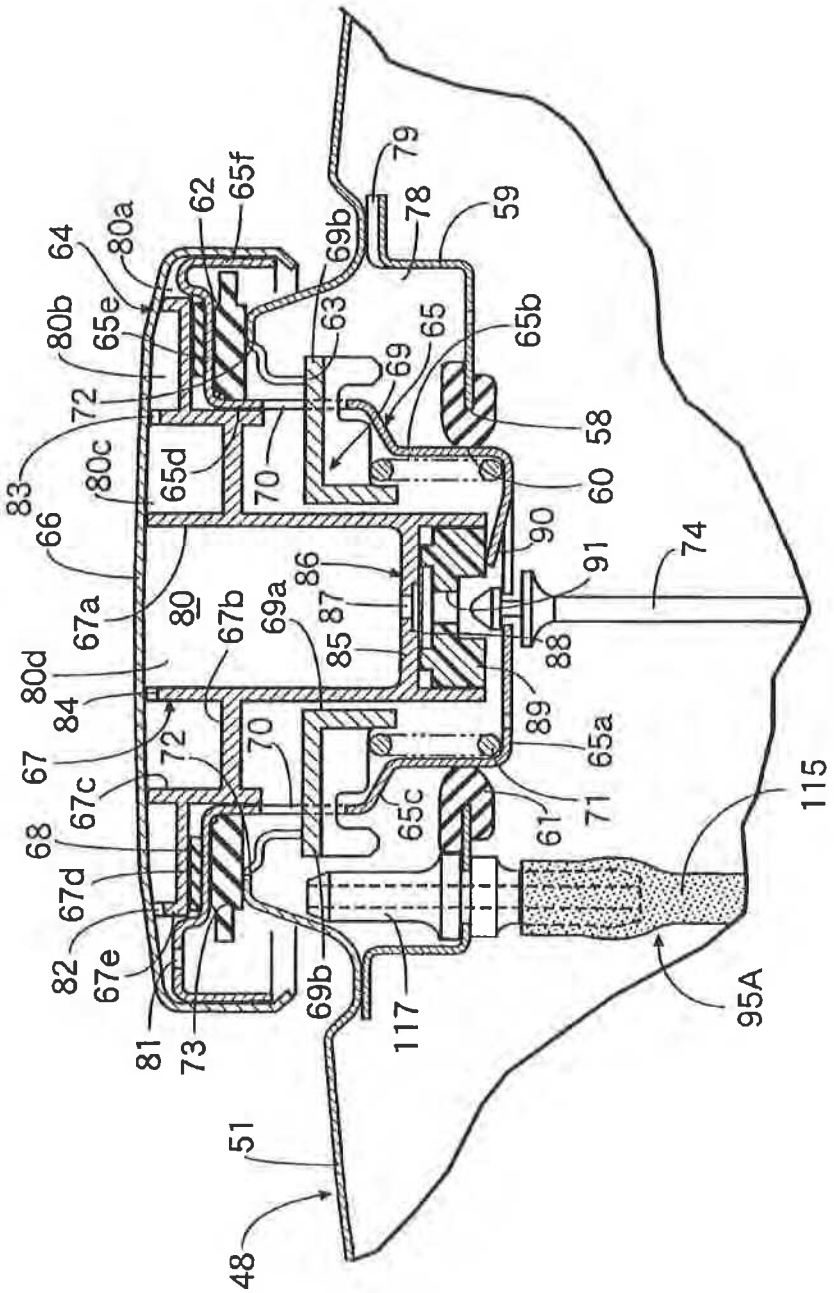
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FIG.5

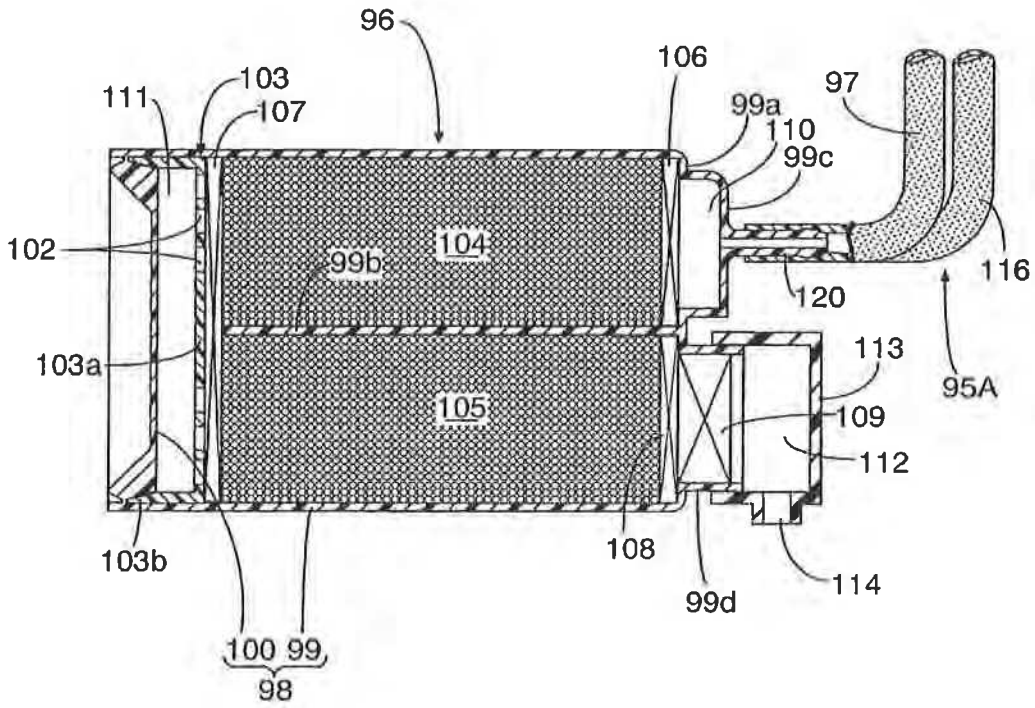
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FIG.6

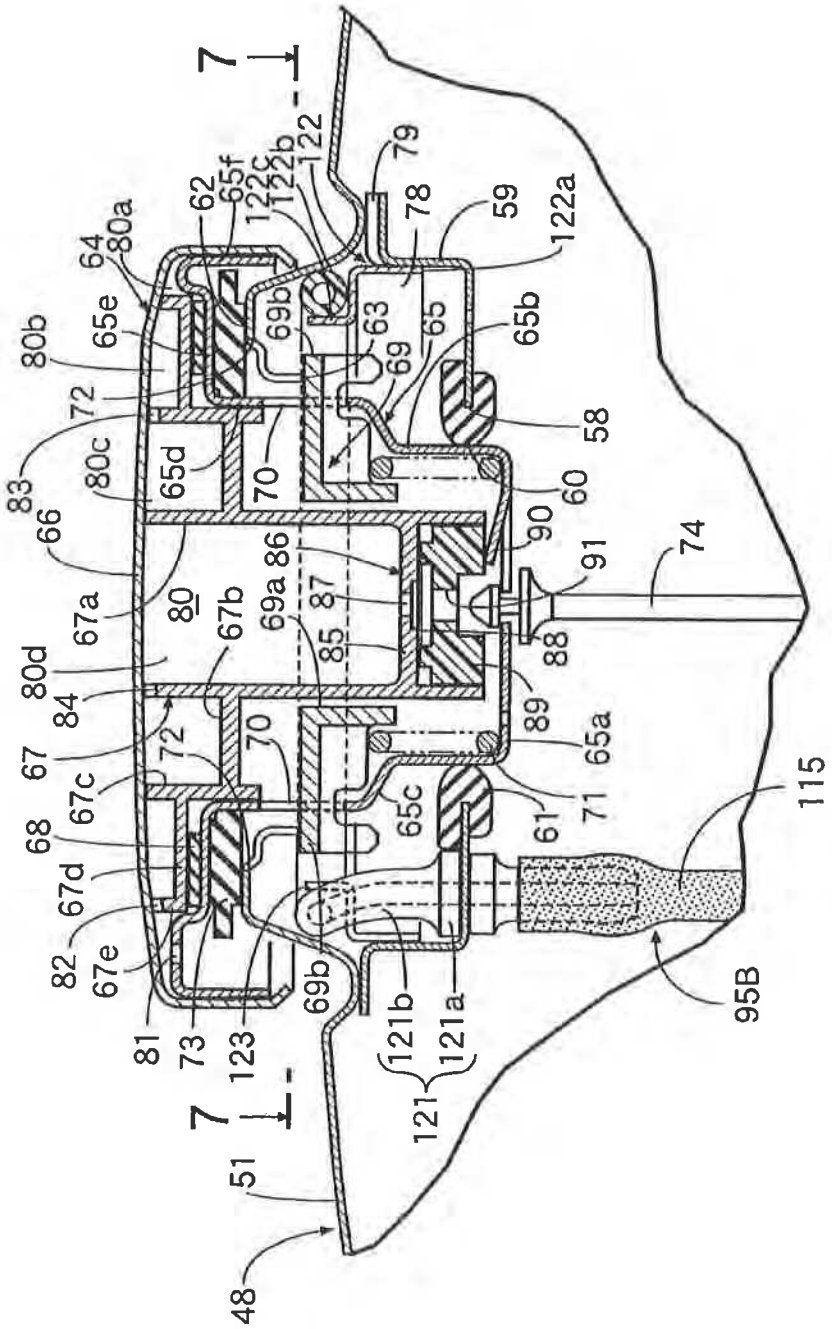
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FIG.7

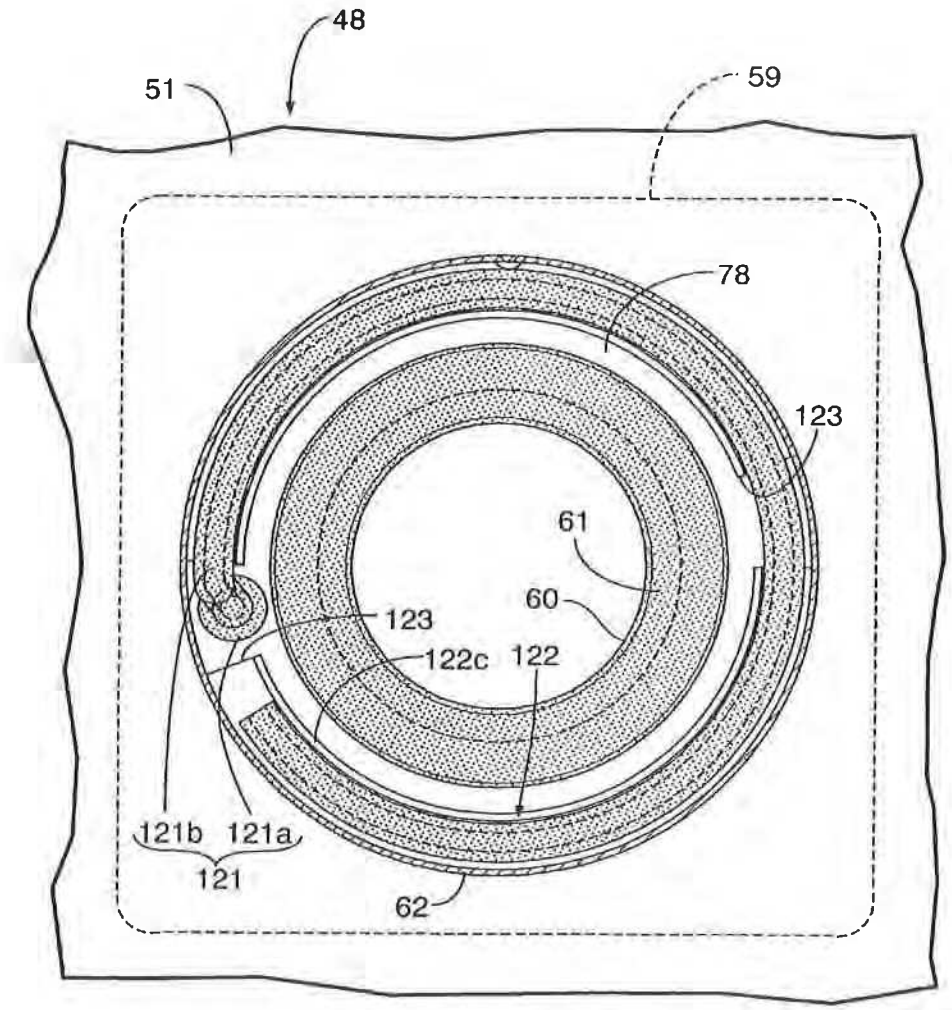
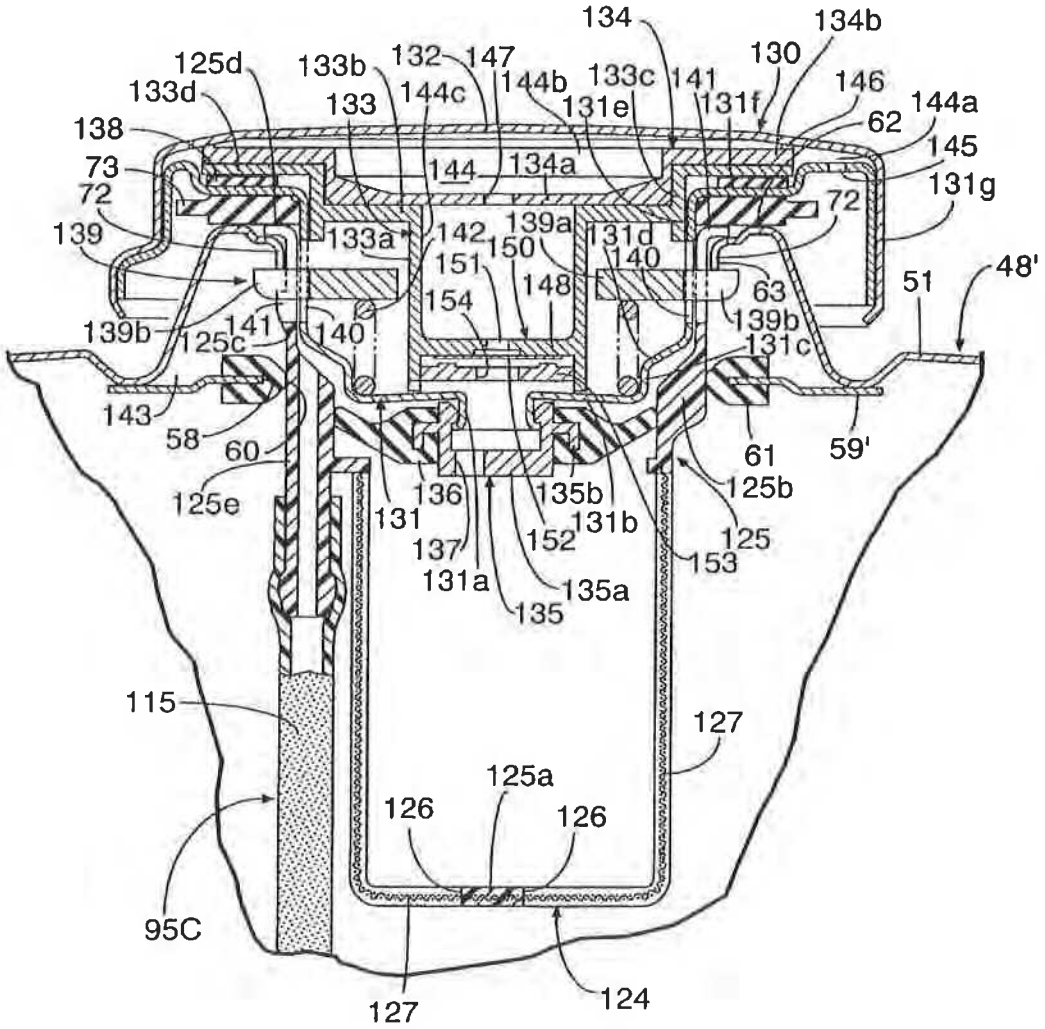


FIG.8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GENERAL-PURPOSE ENGINE

RELATED APPLICATION DATA

The Japanese priority application Nos. 2003-405426 and 2003-405428 upon which the present application is based are hereby incorporated in their entirety herein by reference.

BACKGROUND OF THE INVENTION

1. Field of the Invention

The present invention relates to a general-purpose engine including a canister for adsorbing fuel vapor that has evaporated within a fuel tank, wherein the fuel vapor desorbed from the canister is guided to an intake system communicating with an engine main body.

2. Description of the Related Art

A general-purpose engine having a canister disposed within a tank cap of a fuel tank is known from, for example, Japanese Patent Application Laid-open No. 7-34985.

Usually, a general-purpose engine needs to be compact in size so that a work machine does not become too large. However, in the conventional general-purpose engine, wherein the canister is disposed within the tank cap, the area around the tank cap becomes undesirably enlarged.

SUMMARY OF THE INVENTION

The present invention has been achieved with the above-mentioned facts, and it is an aspect of the present invention to provide a general-purpose engine wherein a canister is provided without increasing the overall dimensions of the general-purpose engine.

In accordance with an aspect of the present invention, there is provided a general-purpose engine including a canister for adsorbing fuel vapor that has evaporated within a fuel tank. The fuel vapor desorbed from the canister is guided to an intake system communicating with an engine main body. The engine main body includes a crankcase and a cylinder block joined to the crankcase to have an upwardly inclined cylinder axis. The canister is disposed on one side of the crankcase and beneath the cylinder block.

Since the canister is disposed in an empty space formed beneath the cylinder block and has a cylinder axis inclined upward, the canister is able to be arranged as such while avoiding any increase in the overall dimensions or size of the general-purpose engine. Moreover, because the overall dimensions of the general-purpose engine do not increase, even if the capacity of the canister is increased, the adsorption properties of the canister are improved without increasing the overall dimensions of the general-purpose engine.

Furthermore, in accordance with another aspect of the present invention, the engine main body of the general-purpose engine includes a cylinder head joined to a head portion of the cylinder block. As such, the intake system and an exhaust system are connected to mutually opposite sides of the cylinder head. A charge pipeline, which guides the fuel vapor from the fuel tank, and a purge pipeline, which guides the fuel vapor desorbed from the canister, are connected to a part of a casing of the canister facing the intake system side.

Since the charge pipeline and the purge pipeline are connected to the casing of the canister on the intake side, where exhaust heat from the engine main body has little influence, the exhaust heat is prevented from affecting adsorption and desorption of the fuel vapor in the canister, which improves the efficiency of the canister.

In accordance with yet another aspect of the present invention, the fuel tank of the general-purpose engine includes a removable tank cap. A fuel vapor passage communicating with the interior of the fuel tank is formed between the tank cap and the fuel tank. A pipeline that forms a part of a charge pipeline for guiding fuel vapor from the interior of the fuel tank to the canister and has one end connected to the fuel vapor passage is arranged within the fuel tank to extend through the interior of the fuel tank. Because the pipeline forming a part of the charge pipeline is arranged within the fuel tank, the portion of the charge pipeline exposed to the outside is reduced; the overall dimensions of the general-purpose engine, and consequently, the dimensions of a work machine, are reduced; the ease of mounting and the appearance of the general-purpose engine are enhanced; the salability is improved; and the overall safety, taking into consideration the leakage of fuel vapor, damage to the pipelines, etc., is also enhanced.

Furthermore, in accordance with yet another aspect of the present invention, an external communication passage of the general-purpose engine, which communicates with the outside, is formed within the tank cap. A one-way valve is provided within the tank cap, wherein the one-way valve opens when a pressure within the fuel tank is lower than an external pressure to provide communication between the external communication passage and the interior of the fuel tank. With this arrangement, even when the airflow resistance of a route from the charge pipeline through the canister to the intake system is increased due to the adsorption of the fuel vapor or the build up of impurities in the canister, by operating the one-way valve, the pressure within the fuel tank is prevented from becoming negative. Accordingly, fuel from the fuel tank is smoothly supplied even if the fuel level within the fuel tank decreases.

The above-mentioned aspects, other aspects, characteristics, and advantages of the present invention will become apparent from an explanation of preferred embodiments described in detail below with reference to the attached drawings.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. **1** is a front view of an engine according to a preferred embodiment of the present invention;

FIG. **2** is a partially cutaway side view of the engine when viewed from the direction of arrow **2** in FIG. **1**;

FIG. **3** is a vertical sectional view of a fuel tank of the engine;

FIG. **4** is an enlarged view of an upper part of the fuel tank shown in FIG. **3** as well as a removable tank cap;

FIG. **5** is an enlarged sectional view of a canister taken along line **5**—**5** in FIG. **1**;

FIG. **6** is a vertical sectional view of an upper part of a fuel tank and a removable tank cap according to an alternate embodiment of the present invention;

FIG. **7** is a sectional view of the fuel tank taken along line **7**—**7** in FIG. **6**; and

FIG. **8** is a vertical sectional view of an upper part of a fuel tank and a tank cap according to a third embodiment of the present invention.

DESCRIPTION OF THE PREFERRED EMBODIMENTS

Referring to the preferred embodiment of the present invention, which is illustrated in FIGS. **1** to **5**, a general-purpose engine is an air-cooled single-cylinder engine used

in, for example, a work machine. An engine main body **11** includes a crankcase **12**, a cylinder block **13**, and a cylinder head **14**. The cylinder block **13** is joined to one side of the crankcase **12** and has an upwardly inclined cylinder axis C. The cylinder head **14** is joined to a head portion of the cylinder block **13**. A plurality of air cooling fins **13***a* and **14***a* are provided on outer surfaces of the cylinder block **13** and the cylinder head **14**. The crankcase **12** is mounted on an engine bed via a mounting face **12***a* on a lower surface of the crankcase **12**. A head cover **15** is joined to the cylinder head **14** for covering a valve operating system (not illustrated).

The crankcase **12** is formed from a case main body **16** and a side cover **17**. The case main body **16** is integrally cast-molded with the cylinder block **13**. The side cover **17** is joined to an open end of the case main body **16**. One end **18***a* of a crankshaft **18**, which has a horizontal axis and is rotatably supported in the crankcase **12**, projects from the side cover **17**. A case **20** of a recoil starter **19** is mounted on the case main body **16** on a side opposite the side cover **17** and can be connected to the other end of the crankshaft **18**.

An intake system **21** of the engine includes a carburetor **22**, an intake pipe **23**, and an air cleaner **24**. The carburetor **22** is disposed to one side of the recoil starter **19** and is connected to the cylinder head **14** of the engine main body **11**. A downstream end of the intake pipe **23** is connected to the carburetor **22**, while an upstream end of the intake pipe **23** is connected to the air cleaner **24**.

A cleaner case **25** of the air cleaner **24** includes a cleaner case main body **26** and a cover plate **27**. The cleaner case main body **26** is formed into a bowl shape opening downward. The cover plate **27** closes a lower open end of the cleaner case main body **26**. A cylindrical first cleaner element **28** and a cylindrical second cleaner element **29**, which coaxially surrounds the first cleaner element **28**, are housed within the cleaner case **25**. Opposite ends, in the axial direction of the first and second cleaner elements **28** and **29**, are supported by a pair of disc-shaped retaining plates **30** and **31**, respectively. Both cleaner elements **28** and **29** are housed within the cleaner case **25** wherein one of the retaining plates **31** abuts against the cover plate **27**.

An interior of the cleaner case **25** is divided by the cleaner elements **28** and **29** into an uncleaned chamber **32** on the outer side and a cleaned chamber **33** on the inner side. An inlet pipe portion **26***a*, which communicates with the uncleaned chamber **32**, is integrally provided with the case main body **26** of the cleaner case **25**. An inlet pipe **34** is connected to the inlet pipe portion **26***a* and feeds external air into the uncleaned chamber **32**.

The external air fed into the uncleaned chamber **32** through the inlet pipe **34** and the inlet pipe portion **26***a* is cleaned while passing through the second cleaner element **29** and the first cleaner element **28**, and is then guided to the cleaned chamber **33**. The cleaned air within the cleaned chamber **33** is guided to the carburetor **22** through the intake pipe **23**.

The intake pipe **23** extends downward from the air cleaner **24** and is formed from a pipe **35** and a cover **36**. The pipe **35** extends vertically with an open upper end, and has, in a lower part, an integral connecting pipe portion **35***a* connected to the carburetor **22**. The cover **36** closes an upper end opening of the pipe **35** and abuts against a bottom of the cover plate **27**. A feed pipe portion **36***a* is integrally provided with the cover and extends through central parts of the cover plate **27** and the retaining plate **31** and projects into the interior of the cleaned chamber **33** from below.

An increased diameter head portion **37***a* of a bolt **37** engages the pipe **35** from below, while the remainder of the bolt **37** extends through the pipe **35**, the feed pipe portion **36***a* of the cover **36**, the retaining plate **30**, and the upper closed end of the cleaner case main body **26**. A wing nut **38** is screwed onto a threaded portion of the bolt **37** and engages the retaining plate **30** from above. Tightening the wing nut **38** establishes a unit including the first and second cleaner elements **28** and **29**, the cover plate **27** of the cleaner case **25**, and the intake pipe **23**, all of which are held between the retaining plates **30** and **31**. A plurality of ribs **26***b* are provided at the closed upper end of the cleaner case main body **26** of the cleaner case **25**, and abut against the retaining plate **30** from above. Screwing and tightening a wing nut **39** onto a threaded portion of the bolt **37** projecting upward from the closed upper end of the cleaner case main body **26** completes assembly of the air cleaner **24**, thus connecting the air cleaner **24** to the intake pipe **23**.

An exhaust system **41** of the engine includes an exhaust pipe **42** and an exhaust muffler **43** which is covered with a cover **45**. The exhaust pipe **42** is connected to the cylinder head **14** of the engine main body **11** on the side opposite the carburetor **22**. The exhaust muffler **43** is connected to the exhaust pipe **42** and is supported by a bracket **44** that is attached to the cylinder head **14** of the engine main body **11**.

That is, the intake system **21** and the exhaust system **41** are connected to mutually opposite sides of the cylinder head **14** of the engine main body **11**.

A fuel tank **48** is disposed above the crankcase **12** of the engine main body **11**. The fuel tank **48** is supported by support arms **49** and **50**. The support arm **49** is integrally provided with the case main body **16** of the crankcase **12**. The support arm **50** is integrally provided with the cylinder block **13**.

In FIG. **3**, the fuel tank **48** is formed by joining the peripheral edge of an upper tank half **51** and the peripheral edge of a lower tank half **52** to each other. The upper tank half **51** is formed into a bowl shape opening downward. The lower tank half **52** is formed into a bowl shape opening upward. The peripheral edge of a support cover **53** is joined to the peripheral edges of the upper and lower tank halves **51** and **52**. The support cover **53** is formed in a bowl shape opening upward to cover the lower tank half **52** from below.

Secured to an inner face of the support cover **53** are a weld nut **56** and a head **54***a* of a bolt **54** inserted through the support cover **53** and the support arm **49**. A nut **55** is screwed onto a threaded portion of the bolt **54** projecting from the support arm **49**. A bolt **57** inserted through the support arm **50** and the support cover **53** is screwed into the weld nut **56**. Tightening the nut **55** and the bolt **57** enables the support cover **53**, that is, the fuel tank **48**, to be supported by the engine main body **11**.

Referring also to FIG. **4**, a seal support member **59** is welded to a central part of an inner face of the upper tank half **51** of the fuel tank **48**. A central part of the seal support member **59** has a seal-mounting hole **58**. An annular seal **61** is mounted in the seal-mounting hole **58** to form a fuel filler hole **60** by means of an inner periphery of the seal **61**. Furthermore, integrally formed with the central part of the upper tank half **51**, at a position corresponding to the seal support member **59**, are a sealing portion **62** and a tubular latching portion **63**. The sealing portion **62** protrudes upward into a ring shape. The tubular latching portion **63** is connected to the inner periphery of the sealing portion **62** and extends downward.

The fuel filler hole **60** is closed with a removable tank cap **64**. The tank cap **64** includes an insertion tube **65**, a dish-shaped operating member **66**, and a support tube **67** held between the insertion tube **65** and the operating mem-

ber **66**. The insertion tube **65** is removably inserted into the fuel filler hole **60**. The operating member **66** is joined to the upper end of the insertion tube **65**.

The insertion tube **65** is integrally formed from a bottomed small-diameter cylindrical portion **65***b*, a tapered portion **65***c*, a large-diameter cylindrical portion **65***d*, a flange portion **65***e*, and a mating tubular portion **65***f*. The small-diameter cylindrical portion **65***b* has a lower end closed by an end wall **65***a*. The tapered portion **65***c* has a small-diameter end coaxially connected to the other end of the small-diameter cylindrical portion **65***b*. The large-diameter cylindrical portion **65***d* is coaxially connected to the large-diameter end of the tapered portion **65***c*. The flange portion **65***e* extends radially outward from the upper end of the large-diameter cylindrical portion **65***d*. The mating tubular portion **65***f* extends from the outer periphery of the flange portion **65***e* to the side on which the mating tubular portion **65***f* coaxially surrounds the large-diameter cylindrical portion **65***d*. The small-diameter cylindrical portion **65***b* is inserted into the fuel filler hole **60** while being in resilient sliding contact with the seal **61**.

The mating tubular portion **65***f* of the insertion tube **65** is fitted into the dish-shaped operating member **66**. The operating member **66** is joined to the upper end of the insertion tube **65** by swaging an open edge of the operating member **66** to engage the tip of the mating tubular portion **65***f*.

The support tube **67** integrally includes a first cylindrical portion **67***a*, a first connecting collar portion **67***b*, a second cylindrical portion **67***c*, a second connecting collar portion **67***d*, and a third cylindrical portion **67***e*. The first cylindrical portion **67***a* is coaxially disposed within the small-diameter cylindrical portion **65***b* of the insertion tube **65**. The first connecting collar portion **67***b* projects radially outward from a middle portion close to the upper end of the first cylindrical portion **67***a*. The second cylindrical portion **67***c* is fitted into the large-diameter cylindrical portion **65***d* of the insertion tube **65** to coaxially surround the first cylindrical portion **67***a* and is connected to the outer periphery of the first connecting collar portion **67***b*. The second connecting collar portion **67***d* projects radially outward from a middle portion close to the upper end of the second cylindrical portion **67***c*. The third cylindrical portion **67***e* is connected to the outer periphery of the second connecting collar portion **67***d* to coaxially surround the second cylindrical portion **67***c*. Upper ends of the first to the third cylindrical portions **67***a*, **67***c*, and **67***e* abut against the closed end of the operating member **66**.

An annular spacer **68**, which is made of an elastic material, is held between the second connecting collar portion **67***d* of the support tube **67** and the flange portion **65***e* of the insertion tube **65**. By swaging the open edge of the operating member **66** to engage the mating tubular portion **65***f* of the insertion tube **65**, the operating member **66** is joined to the upper end of the insertion tube **65**, and the support tube **67** is held between the insertion tube **65** and the operating member **66**.

An engagement member **69** is slidably supported in the first cylindrical portion **67***a* of the support tube **67** beneath the first connecting collar portion **67***b*. The engagement member **69** integrally includes a cylindrical boss **69***a* and a pair of engagement arms **69***b*. The cylindrical boss **69***a* is fitted around the first cylindrical portion **67***a*. The engagement arms **69***b* extend on opposite sides from the boss **69***a* and away from an outer diameter of the first cylindrical portion **67***a*. A pair of slits **70** provided in the large-diameter cylindrical portion **65***d* of the insertion tube **65** extends in the axial direction. The engagement arms **69***b* extend through the slits **70**. That is, the engagement member **69** is mounted on the tank cap **64** to prevent the engagement member **69** from pivoting around an axis of the engagement member **69** by the two slits **70** and an axial sliding range of the engagement member **69** is restricted by longitudinally opposite ends of the slits **70**. A spring **71** is provided under compression between the end wall **65***a* of the insertion tube **65** and the engagement member **69**, wherein the spring **71** exhibits a spring force urging the engagement member **69** toward the first connecting collar portion **67***b* of the support tube **67**.

Tips of the engagement arms **69***b* project from the large-diameter cylindrical portion **65***d* of the insertion tube **65**. A pair of cutouts **72** is formed in the latching portion **63** of the fuel tank **48**. The tips of the engagement arms **69***b* are removably inserted into the cutouts **72**. The latching portion **63** is formed so that, in a process in which the tank cap **64** is pivoted in one direction through a predetermined angle while the tips of the engagement arms **69***b* are inserted into the two cutouts **72**, the latching portion **63** pushes the engagement member **69** to compress the spring **71**. When the tank cap **64** is pivoted through the predetermined angle, the latching portion **63** engages the engagement arms **69***b*, resiliently urged by the spring **71**, to maintain a state in which the tank cap **64** is mounted on the fuel tank **48**.

A ring-shaped gasket **73** is fitted around the outer periphery of the large-diameter cylindrical portion **65***d* of the insertion tube **65**. In a state in which the tank cap **64** is mounted on the fuel tank **48**, the gasket **73** is held between the sealing portion **62** of the fuel tank **48** and the flange portion **65***e* of the insertion tube **65**.

An upper end portion of a strap **74** is retained on the end wall **65***a* of the insertion tube **65**. The lower end of the strap **74** is integrally formed with a hook **75** wherein the hook **75** does not easily pass through the filler opening **60**. Therefore, when the tank cap **64** is detached from the fuel tank **48**, the hook **75** catches onto the seal support member **59** at the peripheral edge of the fuel filler hole **60**, thus preventing the tank cap **64** from falling off.

In a state in which the tank cap **64** is mounted on the fuel tank **48**, an annular fuel vapor passage **78** is formed by the sealing portion **62** of the fuel tank **48**, the seal support member **59**, and the tank cap **64** to surround the tank cap **64**. A channel **79** is provided on the seal support member **59** to form a passage that provides communication between the fuel vapor passage **78** and the interior of the fuel tank **48**. The channel **79** is formed between the seal support member **59** and an inner face of the upper tank half **51**. That is, the fuel vapor passage **78** communicates with the interior of the fuel tank **48**.

An external communication passage **80** that communicates with the outside is formed between the operating member **66** and the support tube **67** of the tank cap **64**. The external communication passage **80** includes a first annular passage portion **80***a*, a second annular passage portion **80***b*, a third annular passage portion **80***c*, and a central passage portion **80***d*. The first annular passage portion **80***a* is formed between the flange portion **65***e* of the insertion tube **65** and the operating member **66** outside the third cylindrical portion **67***e* of the support tube **67**. The second annular passage portion **80***b* is formed between the second and third cylindrical portions **67***c* and **67***e* of the support tube **67**. The third annular passage portion **80***c* is formed between the second and first cylindrical portions **67***c* and **67***a* of the support tube **67**. The central passage portion **80***d* is formed within the first cylindrical portion **67***a* of the support tube **67**.

An external communication hole **81**, providing communication between the first annular passage portion **80***a* and

the outside, is provided in the flange portion **65***e* of the insertion tube **65**. A communication channel **82**, providing communication between the first and second annular passage portions **80***a* and **80***b*, is provided at the upper end of the third cylindrical portion **67***e* of the support tube **67**. A communication channel **83**, providing communication between the second and third annular passage portions **80***b* and **80***c*, is provided at the upper end of the second cylindrical portion **67***c* of the support tube **67**. A communication channel **84**, providing communication between the third annular passage portion **80***c* and the central passage portion **80***d*, is provided at the upper end of the first cylindrical portion **67***a* of the support tube **67**.

A partition **85** defining the lower end of the central passage portion **80***d* of the external communication passage **80** is integrally provided with the inner periphery of a portion close to the lower end of the first cylindrical portion **67***a* of the support tube **67** to divide the interior of the first cylindrical portion **67***a* into upper and lower parts.

A one-way valve **86** is provided within the tank cap **64** and opens when the pressure of the interior of the fuel tank **48** is lower than the external pressure to provide communication between the external communication passage **80** and the interior of the fuel tank **48**. The one-way valve **86** includes a valve hole **87** and a leaf valve member **88**. The valve hole **87** is provided in a central part of the partition **85** and coaxially extends from the lower end of the central passage portion **80***d* of the external communication passage **80**. The leaf valve member **88** is capable of closing the valve hole **87** by being seated on the central part of the partition **85** from the side opposite the central passage portion **80***d*.

A blocking member **89** is fitted into a lower end part of the first cylindrical portion **67***a*. The state in which the blocking member **89** is fitted into the first cylindrical portion **67***a* is maintained by making a support piece **90** abut against the blocking member **89**, wherein the support piece **90** is formed by cutting and raising a part of the end wall **65***a* of the insertion tube **65**.

A passage **91**, communicating with the interior of the fuel tank **48**, is provided in a central part of the blocking member **89**, wherein the interior pressure of the fuel tank **48** acts on the valve member **88** from the side opposite the partition **85**. The gap between the blocking member **89** and the partition **85** is set to allow opening and closing operations of the valve member **88** which is housed between the blocking member **89** and the partition **85**.

Fuel vapor evaporated within the fuel tank **48** and guided to the fuel vapor passage **78** is then guided to a canister **96** by a charge pipeline **95**A. The fuel vapor desorbed from the canister **96** is guided into the intake pipe **23** of the intake system **21** via a purge pipeline **97**. The canister **96** is disposed to one side of the crankcase **12** and beneath the cylinder block **13** having the upwardly inclined cylinder axis C.

In FIG. **5**, a casing **98** of the canister **96** has an axis that is substantially parallel to the crankshaft **18** rotatably supported by the crankcase **12** of the engine main body **11**. The casing **98** is formed from a synthetic resin and has a bottomed cylindrical casing main body **99** and a cover **100**. The casing main body **99** has an end wall **99***a* at one end and an opening at the other end. The cover **100** is welded to the casing main body **99** to close the opening.

The intake system **21** and the exhaust system **41** are connected to mutually opposite sides of the cylinder head **14** of the engine main body **11**. The casing **98** is disposed so that the end wall **99***a* of the casing main body **99** faces the intake system **21** side. The cylinder block **13** includes a heat shielding cover **101**, which covers the cylinder block **13** from below and is disposed between the cylinder block **13** and the canister **96**. The casing **98** is fixedly supported by the heat shielding cover **101**.

A partition wall **99***b* is integrally provided with an inner face of the casing main body **99** and the end wall **99***a*. The partition wall **99***b* has one end connected to the end wall **99***a* and extends toward the cover **100** to divide the interior of the casing main body **99** into upper and lower portions. A support member **103** is fitted into and fixed to the other end of the casing main body **99** to form a middle chamber **111** between the support member **103** and the cover **100**. The support member **103** integrally has a disc portion **103***a* having a plurality of through holes **102**, and a cylindrical portion **103***b* having one end thereof connected to the outer periphery of the disc portion **103***a* and extending toward the cover **100**. The other end of the cylindrical portion **103***b*, which is fitted into the other end of the casing main body **99**, is held between the cover **100** and the casing main body **99**.

An upper adsorbent layer **104** packed with an adsorbent, such as, for example, activated carbon, is housed and held within the casing main body **99** above the partition wall **99***b*. A filter **106** is disposed between the upper adsorbent layer **104** and the end wall **99***a* and a filter **107** is disposed between the upper adsorbent layer **104** and the disc portion **103***a* of the support member **103**. A lower adsorbent layer **105** packed with an adsorbent, such as, for example, activated carbon, is housed and held within the casing main body **99** beneath the partition wall **99***b*. The filter **107** is disposed between the lower adsorbent layer **105** and the disc portion **103***a* of the support member **103**. The filter **108** is disposed between the lower adsorbent layer **105** and the end wall **99***a*.

An expanded portion **99***c* which forms an introduction chamber **110** between the expanded portion **99***c* and the filter **106** is integrally provided with the end wall **99***a* above the partition wall **99***b* and protrudes outward. A connecting tubular portion **99***d* having a filter **109** fitted and housed therewithin is integrally provided with the end wall **99***a* beneath the partition wall **99***b* and protrudes outward. A cap **113** is fitted onto the connecting tubular portion **99***d* to form a discharge chamber **112** between the cap **113** and the filter **109**. The cap **113** is provided with an external communication hole **114** which communicates with the discharge chamber **112** and opens downward.

Connected to the expanded portion **99***c* are the charge pipeline **95**A, which guides the fuel vapor from the fuel tank **48**, and the purge pipeline **97**, which guides the fuel vapor that has desorbed from the canister **96** to the intake pipe **23**. The fuel vapor that has evaporated in the fuel tank **48** when the engine is stopped is fed from the charge pipeline **95**A into the introduction chamber **110** and flows toward the discharge chamber **112** via the filter **106**, the upper adsorbent layer **104**, the filter **107**, the through holes **102** of the support member **103**, the middle chamber **111**, the through holes **102** of the support member **103**, the filter **107**, the lower adsorbent layer **105**, and the filters **108** and **109**. The fuel vapor is adsorbed by the upper and lower adsorbent layers **104** and **105**.

When the engine is running, air fed into the discharge chamber **112** through the external communication hole **114** flows toward the intake pipe **23** via the filters **109** and **108**, the lower adsorbent layer **105**, the filter **107**, the through holes **102** of the support member **103**, the middle chamber **111**, the through holes **102** of the support member **103**, the filter **107**, the upper adsorbent layer **104**, the filter **106**, the introduction chamber **110**, and the purge pipeline **97**. The

fuel vapor desorbed from the lower adsorbent layer **105** and the upper adsorbent layer **104** is guided to the intake pipe **23** side accompanied by the air.

In this way, the interior of the casing **98** of the canister **96** is divided into upper and lower portions by the partition wall portion **99***b*, and the fuel vapor or the air accompanying the fuel vapor flows, sequentially, past the upper adsorbent layer **104** above the partition wall portion **99***b* and the lower adsorbent layer **105** beneath the partition wall portion **99***b*. Therefore, it is possible to increase the adsorption length while keeping the casing **98** compact, as well as improving adsorption efficiency.

The charge pipeline **95**A includes a pipeline **115** and a pipeline **116**. The pipeline **115** is formed between the tank cap **64** and the fuel tank **48** and has one end communicating with the fuel vapor passage **78** which communicates with the interior of the fuel tank **48**. The pipeline **116** provides a connection between the pipeline **115** and the canister **96**. The pipelines **115** and **116** are, for example, rubber hoses.

A connecting pipe **117** vertically extends through the seal support member **59** of the fuel tank **48** on the side opposite the canister **96** relative to the axis of the tank cap **64**. A middle portion of the connecting pipe **117** is mounted on the seal support member **59**, wherein the upper end of the connecting pipe **117** communicates with the fuel vapor passage **78**, and the lower end of the connecting pipe **117** is connected to the upper end of the pipeline **115**. A vertically extending connecting pipe **118** passes through the base of the lower tank half **52** of the fuel tank **48** in a liquid-tight manner. A middle portion of the connecting pipe **118** is mounted on the base of the lower tank half **52**. The upper end of the connecting pipe **118** is connected to the lower end of the pipeline **115**. The pipeline **116** extends through the support cover **53** and has one end connected to the lower end of the connecting pipe **118**.

That is, the pipeline **115**, forming a part of the charge pipeline **95**A, is disposed within the fuel tank **48** while extending through the interior of the fuel tank **48** to communicate with the fuel vapor passage **78** on the side opposite the canister **96** relative to the axis of the tank cap **64**.

A pair of connecting pipe portions **119** and **120** are provided side-by-side on the expanded portion **99***c* of the canister **96**. The other end of the pipeline **116** is connected to one connecting pipe portion **119**. One end of the purge pipeline **97** is connected to the other connecting pipe portion **120**. The other end of the purge pipeline **97** is connected to a connecting pipe portion **35***b* which is integral with the pipe **35** of the intake pipe **23**.

Referring again to FIG. **3**, mounted on the base of the lower tank half **52** of the fuel tank **48** is a filter case **93** provided with a filter **92** for filtering fuel within the fuel tank **48**. A fuel hose **94** which guides the fuel to the carburetor **22** is connected to the filter case **93**.

The operation of the first embodiment is now described.

The engine main body **11** includes the crankcase **12** and the cylinder block **13** joined to the crankcase **12** and has the upwardly inclined cylinder axis C. The canister **96** for adsorbing fuel vapor evaporated within the fuel tank **48** is disposed on one side of the crankcase **12** and beneath the cylinder block **13**.

That is, an empty space is formed beneath the cylinder block **13** as a result of the cylinder axis C being inclined upward. Since the canister **96** is disposed in the empty space, it is possible to arrange the canister **96** therein without increasing the overall dimensions of the general-purpose engine. Moreover, the overall dimensions of the general-purpose engine do not increase even if the capacity of the canister **96** is increased. Thus, it is possible to improve the adsorption properties of the canister **96** while avoiding any increase in the overall dimensions of the general-purpose engine.

Furthermore, the engine main body **11** includes the cylinder head **14** joined to the head portion of the cylinder block **13** wherein the intake system **21** and the exhaust system **41** are connected to mutually opposite sides of the cylinder head **14**. Also, the charge pipeline **95**A, which guides the fuel vapor from the fuel tank **48**, and the purge pipeline **97**, which guides the fuel vapor desorbed from the canister **96**, are connected to a portion of the casing **98** of the canister **96** facing the intake system **21** side. Therefore, the charge pipeline **95**A and the purge pipeline **97** are connected to the casing **98** of the canister **96** on the intake side where exhaust heat from the engine main body **11** has little influence, and it is thus possible to prevent the exhaust heat from affecting adsorption and desorption of fuel vapor in the canister **96**, wherein the efficiency of the canister **96** is improved.

Moreover, the fuel vapor passage **78**, communicating with the interior of the fuel tank **48**, is formed between the fuel tank **48** and the tank cap **64** mounted onto the fuel tank **48**. Also, the pipeline **115**, which forms a part of the charge pipeline **95**A for guiding the fuel vapor from the interior of the fuel tank **48** to the canister **96** and has one end communicating with the fuel vapor passage **78**, is arranged within the fuel tank **48** and extends through the interior of the fuel tank **48**. Therefore, it is possible to reduce the portion of the charge pipeline **95**A exposed to the outside; reduce the overall dimensions of the general-purpose engine, and consequently, the dimensions of the work machine; enhance the ease of mounting and the appearance of the general-purpose engine; improve the salability; and enhance the safety, while taking into consideration the leakage of fuel vapor, damage to the pipelines, etc.

Furthermore, the pipeline **115**, forming a part of the charge pipeline **95**A, communicates with the fuel vapor passage **78** on the side opposite the canister **96** relative to the axis of the tank cap **64**. Therefore, when the fuel tank **48** is tilted with the canister **96** side down, the flow of fuel into the pipeline **115** is avoided. When the fuel tank **48** is tilted with the canister **96** side up, although there is a possibility that fuel might flow into the pipeline **115**, since the canister **96** has a relatively high position, the flow of fuel into the canister **96** is suppressed. As a result, even when the fuel tank **48** is tilted, it is possible to prevent the fuel from flowing permanently into the canister **96**.

Furthermore, the one-way valve **86**, which opens when the pressure within the fuel tank **48** is lower than the external pressure to provide communication between the external communication passage **80** and the interior of the fuel tank **48**, is provided within the tank cap **64**. Therefore, even when the airflow resistance of a route from the charge pipeline **95**A through the canister **96** to the intake system **21** is increased due to the adsorption of the fuel vapor or the build up of impurities in the canister **96**, it is possible, by means of the operation of the one-way valve **86**, to prevent the pressure within the fuel tank **48** from becoming negative, thereby smoothly supplying the fuel from the fuel tank **48** even if the fuel level within the fuel tank **48** decreases.

A second embodiment of the present invention is now described with reference to FIG. **6** and FIG. **7**.

Part of a charge pipeline **95**B, which guides fuel vapor evaporated within a fuel tank **48** to a canister **96**, is formed from a pipeline **115** disposed within the fuel tank **48** and

extends through the interior of the fuel tank **48** and a synthetic resin pipeline **121** which is connected to the upper end of the pipeline **115**.

The pipeline **121** is formed from a connecting pipe portion **121***a* and an extension tubular portion **121***b*. The connecting pipe portion **121***a* is mounted on a seal support member **59** of the fuel tank **48** on the side opposite the canister **96** relative to the axis of a tank cap **64**. The extension tubular portion **121***b* is integrally connected to the connecting pipe portion **121***a* and disposed within a fuel vapor passage **78**.

The connecting pipe portion **121***a* is mounted on the seal support member **59** so that a lower end projects downward from the seal support member **59**. The upper end of the pipeline **115** is connected to the lower end of the connecting pipe portion **121***a*.

The extension tubular portion **121***b* has one end integrally connected to the upper end of the connecting pipe portion **121***a* and is bent into an arc shape to be arranged along substantially the entire circumference within the annular fuel vapor passage **78** with an opening at the other end of the extension tubular portion **121***b* reaching the vicinity of the connecting pipe portion **121***a*.

Fixedly attached to an inner face of the seal support member **59** is a support member **122** for retaining the extension tubular portion **121***b* of the pipeline **21**. The support member **122** includes a support tube portion **122***a* fitted into, and fixed to, the inner face of the seal support member **59**, a support collar portion **122***b* projecting radially inward from the upper end of the support tube portion **122***a*, and an inner periphery restraining tube portion **122***c* rising upward from the inner periphery of the support collar portion **122***b*. The extension tubular portion **121***b* of the pipeline **121** is placed on, and supported by, the support collar portion **122***b*, while an inner peripheral side of the extension tubular portion **121***b* arranged into an arc shape is restrained by the inner periphery restraining tube portion **122***c*.

Provided in the support member **122** is a pair of cutouts **123** formed by cutting away parts of the support collar portion **122***b* and the inner periphery restraining tube portion **122***c*, wherein the cutouts **123** are positioned on one diameter. A portion at the one end of the extension tubular portion **121***b* that rises from the connecting pipe portion **121***a* is positioned in one of the cutouts **123**.

In accordance with the second embodiment, when the fuel tank **48** is tilted with the canister **96** side down, since the opening at the other end of the extension tubular portion **121***b* is at a high position, the flow of fuel into the pipeline **121** is avoided. When the fuel tank **48** is tilted with the canister **96** side up, although there is a possibility that the fuel might flow into the opening at said other end of the extension tubular portion **121***b*, since the extension tubular portion **121***b* is bent into the arc shape, the fuel will not flow from the pipeline **121** into the pipeline **115**. Therefore, it is possible to prevent the fuel from flowing into the canister **96** even when the fuel tank **48** is tilted.

A third embodiment of the present invention is now described with reference to FIG. **8**.

A seal support member **59'** is welded to a central part of an inner face of an upper tank half **51** of a fuel tank **48'**. A central part of the seal support member **59'** has a seal-mounting hole **58** therein. Mounted in the seal-mounting hole **58** is an annular seal **61**, which forms a fuel filler hole **60** with an inner periphery of the seal **61**. A sealing portion **62** and a tubular latching portion **63** are integrally formed with the central part of the upper tank half **51** at a position corresponding to the seal support member **59'**. The sealing portion **62** protrudes upward into a ring shape. The latching portion **63** is connected to the inner periphery of the sealing portion **62** and extends downward.

A filter unit **124** is inserted into an upper part of the fuel tank **48'** wherein the upper end of the filter unit **124** is engaged with a connecting part between the sealing portion **62** and the latching portion **63**. A casing **125** of the filter unit **124** is formed from a synthetic resin and integrally includes: a filter support tube portion **125***a* having a bottomed cylindrical shape with an open upper end; a sealing tube portion **125***b* connected to the upper end of the filter support tube portion **125***a* and inserted into the fuel filler hole **60** to be in resilient contact with the seal **61**; a support tube portion **125***c* that extends upward from the upper end of the sealing tube portion **125***b* and is inserted into the latching portion **63**; and an engagement collar portion **125***d* projecting radially outward from the upper end of the support tube portion **125***c*. The engagement collar portion **125***d* engages from above with the connecting part between the sealing portion **62** and the latching portion **63**.

Provided in the filter support tube portion **125***a* of the casing **125** are a plurality of openings **126** extending from the side face to the base of the filter support tube portion **125***a*. Mesh filters **127** are disposed in the openings **126** and are supported by the filter support tube portion **125***a*.

A tank cap **130** includes: an insertion tube **131** that is removably inserted into an upper part of the casing **125** of the filter unit **124**; a disc-shaped operating member **132** joined to the upper end of the insertion tube **131**; a support tube **133** that is inserted into, and fixed to, an upper part of the insertion tube **131**; a retaining member **134** that is held between the support tube **133** and the operating member **132**; a seal support piece **135** fixed to the lower end of the insertion tube **131**; and a ring-shaped seal **136** that is mounted on the seal support piece **135** and removably inserted into the sealing tube portion **125***b* of the casing **125** in resilient contact therewith.

The seal support piece **135** integrally includes a bottomed cylindrical portion **135***a* formed into a bottomed cylindrical shape with a lower end thereof closed and a mounting projection **135***b* projecting from the outer face of the bottomed cylindrical portion **135***a* and formed to have a substantially L-shaped cross-section when vertically sectioned. A through hole **137** is provided in the lower closed end of the bottomed cylindrical portion **135***a*. In this way, the seal **136** is attached to the seal support piece **135** to surround the bottomed cylindrical portion **135***a* while embedding the mounting projection **135***b* into the inner periphery of the seal **136**.

The insertion tube **131** is integrally formed from: a cylindrical swage-joined portion **131***a* fitted from above into the bottomed cylindrical portion **135***a* of the seal support piece **135** and joined by swaging; a flat circular receiving step **131***b* connected to the upper end of the swage-joined portion **131***a* at substantially a right angle and facing upward; a small-diameter cylindrical portion **131***c* rising slightly upward from the outer periphery of the reception step **131***b*; a tapered portion **131***d* having a small-diameter end coaxially connected to the upper end of the small-diameter cylindrical portion **131***b*; a large-diameter cylindrical portion **131***e* coaxially connected to the large-diameter end of the tapered portion **131***d*; a flange portion **131***f* projecting radially outward from the upper end of the large-diameter cylindrical portion **131***e*; and a mating tubular portion **131***g* extending from the outer periphery of the

flange portion **131***f* to the side where the mating tubular portion **131***g* coaxially surrounds the large-diameter cylindrical portion **131***e*.

The mating tubular portion **131***g* of the insertion tube **131** is fitted into the dish-shaped operating member **132**. The operating member **132** is joined to the upper end of the insertion tube **131** by swaging an open edge of the operating member **132** wherein the operating member **132** engages the tip of the mating tubular portion **131***g*.

The support tube **133** integrally includes a first cylindrical portion **133***a*, a connecting collar portion **133***b*, a second cylindrical portion **133***c*, and a flange portion **133***d*. The first cylindrical portion **133***a* is coaxially disposed within the insertion tube **131**. The connecting collar portion **133***b* projects radially outward from the upper end of the first cylindrical portion **133***a*. The second cylindrical portion **133***c* is fitted into the large-diameter cylindrical portion **131***e* of the insertion tube **131** and connected to the outer periphery of the connecting collar portion **133***b*. The flange portion **133***d* projects radially outward from the upper end of the second cylindrical portion **133***c*.

The retaining member **134** is integrally formed from a bottomed cylindrical portion **134***a* fitted from above into the second cylindrical portion **133***c* of the support tube **133** and a flange portion **134***b* projecting radially outward from the upper end of the bottomed cylindrical portion **134***a*.

The retaining member **134** is held between the support tube **133** and the operating member **132** so that the flange portion **134***b* is disposed between the flange portion **133***d* of the support tube **133** and the operating member **132**. By swaging the open edge of the operating member **132** wherein the operating member **132** engages the mating tubular portion **131***g* of the insertion tube **131** while an annular spacer **138**, which is made from a resilient material, is held between the flange portion **133***d* of the support tube **133** and the flange portion **131***f* of the insertion tube **131**. The upper end of the insertion tube **131** is joined to the operating member **132**. Also, the spacer **138**, the upper end of the support tube **133**, and the retaining member **134** are held between the operating member **132** and the support tube **133**.

An engagement member **139** is slidably supported in a vertical manner within the tank cap **130**. The engagement member **139** is integrally formed from a ring plate **139***a*, surrounding the first cylindrical portion **133***a* of the support tube **133**, and a pair of engagement arms **139***b* extending to opposite sides from the ring plate **139***a* on one diameter of the ring plate **139***a*. The large-diameter cylindrical portion **131***e* of the insertion tube **131**, the support tube portion **125***c*, and the engagement collar portion **125***d* of the casing **125** are each provided with a pair of slits **140** and **141** that extend in the axial direction, wherein the engagement arms **139***b* extend through the slits **140** and **141**. That is, the engagement member **139** is mounted on the tank cap **130** so that the engagement member **139** is prevented from pivoting around an axis by the slits **140** and **141**, and an axial sliding range of the engagement member **139** is restricted by longitudinally opposite ends of the slits **140** and **141**. A spring **142** is provided under compression between the receiving step **131***b* of the insertion tube **131** and the ring plate **139***a* of the engagement member **139**, wherein the spring **142** exhibits a spring force urging the engagement member **139** toward the first connecting collar portion **133***b* of the support tube **133**.

Tips of the engagement arms **139***b* project from the support tube portion **125***c* of the casing **125**. A pair of cutouts **72** is formed in the latching portion **63** of the fuel tank **48'**. The tips of the engagement arms **139***b* are removably inserted into the cutouts **72**. The latching portion **63** is formed so that: in a process in which the tank cap **130** is pivoted in one direction through a predetermined angle while the tips of the engagement arms **139***b* are inserted into the two cutouts **72**, the latching portion **63** pushes the engagement member **139** so as to compress the spring **142**. When the tank cap **130** is pivoted through the predetermined angle, the latching portion **63** engages with the engagement arms **139***b* resiliently urged by the spring **142**, thereby maintaining the state in which the tank cap **130** is mounted on the fuel tank **48'**.

A ring-shaped gasket **73** is fitted around the outer periphery of the large-diameter cylindrical portion **131***e* of the insertion tube **131**. In the state in which the tank cap **130** is mounted on the fuel tank **48'**, the gasket **73** is held between the sealing portion **62** of the fuel tank **48'** and the flange portion **131***f* of the insertion tube **131**.

In the state in which the tank cap **130** is mounted on the fuel tank **48'**, a fuel vapor passage **143** is formed between the support tube **133** of the tank cap **130** and the sealing portion **62** and the seal support member **59'** of the fuel tank **48'**. The fuel vapor passage **143** communicates with the interior of the fuel tank **48'** via the through hole **137** provided in the seal support piece **135** and the filters **127**.

An external communication passage **144** that communicates with the outside is formed between the operating member **132**, the support tube **133**, and the retaining member **134** of the tank cap **130**. This external communication passage **144** includes: an annular passage portion **144***a* formed outside the spacer **138** between the operating member **132** and the flange portions **131***f*, **133***d*, and **134***b* of the insertion tube **131**, the support tube **133**, and the retaining member **134**; a passage portion **144***b* formed between the retaining member **134** and the operating member **132**; and a central passage portion **144***c* formed within the first cylindrical portion **133***a* of the support tube **133**.

The flange portion **131***f* of the insertion tube **131** is provided with an external communication hole **145** providing communication between the annular passage portion **144***a* and the outside. The outer edge of the flange portion **134***b* is provided with a communication channel **146** which provides communication between the annular passage portion **144***a* and the passage portion **144***b*. The closed end of the bottomed cylindrical portion **134***a* is provided with a through hole **147** which provides communication between the passage portion **144***b* and the central passage portion **144***c*.

A partition **148** defining the lower end of the central passage portion **144***c* of the external communication passage **144** is integrally provided with the inner periphery of a portion close to the lower end of the first cylindrical portion **133***a* of the support tube **133** to divide the interior of the first cylindrical portion **133***a* into upper and lower parts.

A one-way valve **150** is provided within the tank cap **130** and opens when the pressure of the interior of the fuel tank **48'** is lower than the external pressure to provide communication between the external communication passage **144** and the interior of the fuel tank **48'**. The one-way valve **150** includes a valve hole **151** and a leaf valve member **152**. The valve hole **151** is provided in a central part of the partition **148** so that the valve hole **151** coaxially extends from the lower end of the central passage portion **144***c*. The leaf valve member **152** is capable of closing the valve hole **151** when seated on the central part of the partition **148** from the side opposite the central passage portion **144***c*.

A blocking member **153** is fitted into, and fixed to, a lower end portion of the first cylindrical portion **133***a*. A passage

154, communicating with the fuel vapor passage 143, is provided in a central part of the blocking member 153 so that the pressure of the interior of the fuel vapor passage 143, that is, the pressure of the interior of the fuel tank 48', acts on the valve member 152 from the side opposite the partition 148. The gap between the blocking member 153 and the partition 148 is set to allow opening and closing operations of the valve member 152 which is housed between the blocking member 153 and the partition 148.

The fuel vapor that has evaporated within the fuel tank 48' and has been guided to the fuel vapor passage 143 is further guided by a charge pipeline 95C to a canister 96. The upper end of a pipeline 115, forming a part of the charge pipeline 95C and extending through the interior of the fuel tank 48' to be disposed within the fuel tank 48', is connected to the lower end of a connecting pipe portion 125*e* integrally provided with the sealing tube portion 125*b* of the casing 125 of the filter unit 124 so as to be connected to the fuel vapor passage 143.

In accordance with this third embodiment, the same effects as in the first embodiment can be achieved.

Although preferred embodiments of the present invention have been described above, the present invention is not limited to the above-mentioned embodiments and can be modified in a variety of ways without departing from the subject matter and/or spirit of the present invention.

What is claimed is:

1. A general-purpose engine comprising:

an engine main body;

a fuel tank;

a canister which adsorbs fuel vapor that has evaporated within the fuel tank; and

an intake system that is in communication with the engine main body, wherein the fuel vapor desorbed from the canister is guided to the intake system;

wherein the engine main body comprises a crankcase and a cylinder block joined to the crankcase and having an upwardly inclined cylinder axis (C), and

wherein the canister is disposed on one side of the crankcase and beneath the cylinder block.

2. The general-purpose engine according to claim 1, wherein the engine main body further comprises a cylinder head joined to a head portion of the cylinder block, wherein the intake system and an exhaust system are connected to mutually opposite sides of the cylinder head, and wherein a charge pipeline, which guides the fuel vapor from the fuel tank, and a purge pipeline, which guides the fuel vapor desorbed from the canister, are connected to a part of a canister casing facing the intake system.

3. The general-purpose engine according to claim 1, wherein the fuel tank includes a removable tank cap and a fuel vapor passage in communication with an interior of the fuel tank being formed between the tank cap and the fuel tank, and wherein a pipeline that forms a part of a charge pipeline, which guides the fuel vapor from the interior of the fuel tank to the canister and has one end connected to the fuel vapor passage, is arranged within the fuel tank and extends through the interior of the fuel tank.

4. The general-purpose engine according to claim 3, wherein an external communication passage that communicates with the outside is formed within the tank cap, and wherein a one-way valve that opens when a pressure within the fuel tank is lower than an external pressure to provide communication between the external communication passage and the interior of the fuel tank, is provided within the tank cap.

* * * * *

EXHIBIT 3

CONFIDENTIAL

ATTORNEYS' EYES ONLY

(Filed Under Seal)

EXHIBIT 4

UL 1439

ISBN 0-7629-0275-2

Tests for Sharpness of Edges on Equipment

EXHIBIT 4

Underwriters Laboratories Inc. (UL)
333 Pfingsten Road
Northbrook, IL 60062-2096

UL Standard for Safety for Tests for Sharpness of Edges on Equipment, UL 1439

Fourth Edition, Dated February 26, 1998

Revisions: This Standard contains revisions through and including June 1, 2004

SUMMARY OF TOPICS

This revision is being issued to clarify various tape properties and address miscellaneous editorial updates and corrections

UL Standards for Safety are developed and maintained in the Standard Generalized Markup Language (SGML). SGML -- an international standard (ISO 8879-1986) -- is a descriptive markup language that describes a document's structure and purpose, rather than its physical appearance on a page. Due to formatting differences resulting from the use of UL's new electronic publishing system, please note that additional pages (on which no requirements have been changed) may be included in revision pages due to relocation of existing text and reformatting of the Standard.

Text that has been changed in any manner is marked with a vertical line in the margin. Changes in requirements are marked with a vertical line in the margin and are followed by an effective date note indicating the date of publication or the date on which the changed requirement becomes effective.

The new and/or revised requirements are substantially in accordance with UL's Bulletin(s) on this subject dated March 25, 2004. The bulletin(s) is now obsolete and may be discarded.

The revisions dated June 1, 2004 include a reprinted title page (page1) for this Standard.

As indicated on the title page (page1), this UL Standard for Safety has been adopted by the Department of Defense.

The UL Foreword is no longer located within the UL Standard. For information concerning the use and application of the requirements contained in this Standard, the current version of the UL Foreword is located on ULStandardsInfoNet at: http://ulstandardsinfonet.ul.com/ulforeword.html

The master for this Standard at UL's Northbrook Office is the official document insofar as it relates to a UL service and the compliance of a product with respect to the requirements for that product and service, or if there are questions regarding the accuracy of this Standard.

Revisions of UL Standards for Safety are issued from time to time. A UL Standard for Safety is current only if it incorporates the most recently adopted revisions.

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Electronic Standards are intended for on-line use, such as for viewing the requirements of a Standard, conducting a word search, and the like. Only one copy of the Standard may be printed from each single-user version of an electronic Standard. Only one copy of the Standard may be printed for each authorized user of a multiple-user version of an electronic Standard. Because of differences in the computer/software/printer setup used by UL and those of electronic Standards purchasers, the printed copy obtained by a purchaser may not look exactly like the on-line screen view or the printed Standard.

An employee of an organization purchasing a UL Standard can make a copy of the page or pages being viewed for their own fair and/or practical internal use.

The requirements in this Standard are now in effect, except for those paragraphs, sections, tables, figures, and/or other elements of the Standard having future effective dates as indicated in the note following the affected item. The prior text for requirements that have been revised and that have a future effective date are located after the Standard, and are preceded by a "SUPERSEDED REQUIREMENTS" notice.

New product submittals made prior to a specified future effective date will be judged under all of the requirements in this Standard including those requirements with a specified future effective date, unless the applicant specifically requests that the product be judged under the current requirements. However, if

the applicant elects this option, it should be noted that compliance with all the requirements in this Standard will be required as a condition of continued Listing and Follow-Up Services after the effective date, and understanding of this should be signified in writing.

This Standard consists of pages dated as shown in the following checklist:

Page	Date
1-10	June 1, 2004
11-14	February 26, 1998

No Text on This Page

FEBRUARY 26, 1998
(Title Page Reprinted: June 1, 2004)

1

UL 1439

Standard for Tests for Sharpness of Edges on Equipment

The First and Second editions were titled Determination of Sharpness of Edges on Equipment.

First Edition – October, 1978
Second Edition – December, 1979
Third Edition – February, 1993

Fourth Edition

February 26, 1998

An effective date included as a note immediately following certain requirements is one established by Underwriters Laboratories Inc.

The Department of Defense (DoD) has adopted UL 1439 on August 2, 1989. The publication of revised pages or a new edition of this Standard will not invalidate the DoD adoption.

Revisions of this Standard will be made by issuing revised or additional pages bearing their date of issue. A UL Standard is current only if it incorporates the most recently adopted revisions, all of which are itemized on the transmittal notice that accompanies the latest set of revised requirements.

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INTRODUCTION

1 Scope

1.1 These requirements cover a test procedure to be used to determine the potential personal injury related to the sharpness of edges that are part of or associated with appliances and equipment.

1.2 *Deleted June 1, 2004.*

2 Units of Measurement

2.1 Values stated without parentheses are the requirement. Values in parentheses are explanatory or approximate information.

3 References

3.1 Any undated reference to a code or standard appearing in the requirements of this standard shall be interpreted as referring to the latest edition of that code or standard.

4 General

4.1 An edge of an enclosure opening, frame, guard, knob, handle or the like of an appliance or equipment shall be smooth and rounded so as not to cause a cut-type injury when contacted during normal use or user maintenance.

Exception: A sharp edge that must be exposed to enable the product to perform its intended function need not comply with the requirement in 4.1.

TESTS

5 Apparatus

5.1 The test apparatus is to consist of the following:

a) Sharp-Edge Tester – The instrument consists essentially of a handle with a pivoted arm attached. A constant-tension spring secured to the handle is used to apply a steady force to the arm. The arm head is a piece of round steel, with an outside diameter of 1/2 inch (12.7 mm) located at the end of the adjustable arm. The arm head is to be wrapped with three layers of tape, the two outer layers act as sensing tapes; the inner layer acts as an indicating tape, or the tapes are to be applied to a 5/8 inch (15.9 mm) removable sleeve that is placed onto the 1/2 inch (12.7 mm) steel head. See Figure 5.1 or 5.2.

b) Indicating Tape (Inner Layer) – 3/4 inch (19.1 mm) wide, adhesive backed, single-adhesive coated, vinyl foam tape, black in color, having the tape properties given in Table 5.1.

c) Sensing Tape No. 2 (Middle Layer) – 3/4 inch (19.1 mm) wide, double-adhesive coated, vinyl foam tape, white in color, having the tape properties given in Table 5.1.

d) Sensing Tape No. 1 (Outer Layer) – 3/4 inch (19.1 mm) wide, single-adhesive coated skived tetrafluorethylene tape – natural color, having the tape properties given in Table 5.1. The skived tetrafluorethylene backing (film) is shaved in a thin layer from a cylindrical block of material.

e) Calibration Equipment – A weight that can exert 1-1/2 lbf (6.7 N) and a length of string.

5.1 revised June 1, 2004

Table 5.1
Average values of tapes-dimensions and properties

Table 5.1 revised June 1, 2004

	Indicating tape[a]	Sensing tape No. 2[b]	Sensing tape No. 1[c]
Thickness	0.045 – 0.080 inch (1.14 – 2.03 mm)	0.025 – 0.040 inch (0.64 – 1.02 mm)	total with adhesive backing: 0.0045 (0.114 mm) backing: 0.0025 – 0.0035 inch (0.064 – 0.089 mm)
Density	16 lbs/cubic foot (256 kg/cubic meter)	14 lbs/cubic foot (224 kg/cubic meter)	–
Tensile	110 lbs/inch^2 (758 kN/m^2) (ASTM D 412-98a(2002)e1[d], Die A)	55 lbs/inch^2 (379 kN/m^2) ["T" Block, Jaw 12 inches/min. (305 mm/minute)]	16 lbs/inch^2 (110 kN/m^2) (ASTM D 1000-99[e])
Elongation, percent	370 (ASTM D 412-98a(2002)e1[d], Die A)	–	275 (ASTM D 1000-99[e])
Dielectric Strength (ASTM D 1000-99[e])	200 – 250 Volts/Mils	–	9000 Volts
Temperature Resistance (continuous)	175°F (80°C)	150°F (65°C)	356°F (180°C)
Compression Deflection @ 25 percent (ASTM D 1056-00[f])	13 psi (90 kN/m^2)	–	–
Compression Modules @ 25 percent	–	8.5 psi (59 kN/m^2)	–
Compression Set percent loss of original height			
Per ASTM D 1056-00[f]	3 percent	–	–
Per ASTM D 1667-97[g]	–	3.9 percent	–

[a] 3M Company Type 4516 or any other tape having the properties in Table 5.1 meets the intent of the requirements.

[b] 3M Company Type 4432 or any other tape having the properties in Table 5.1 meets the intent of the requirements.

[c] Saint Gobain Company #2045–3 or any other tape having the properties in Table 5.1 meets the intent of the requirements.

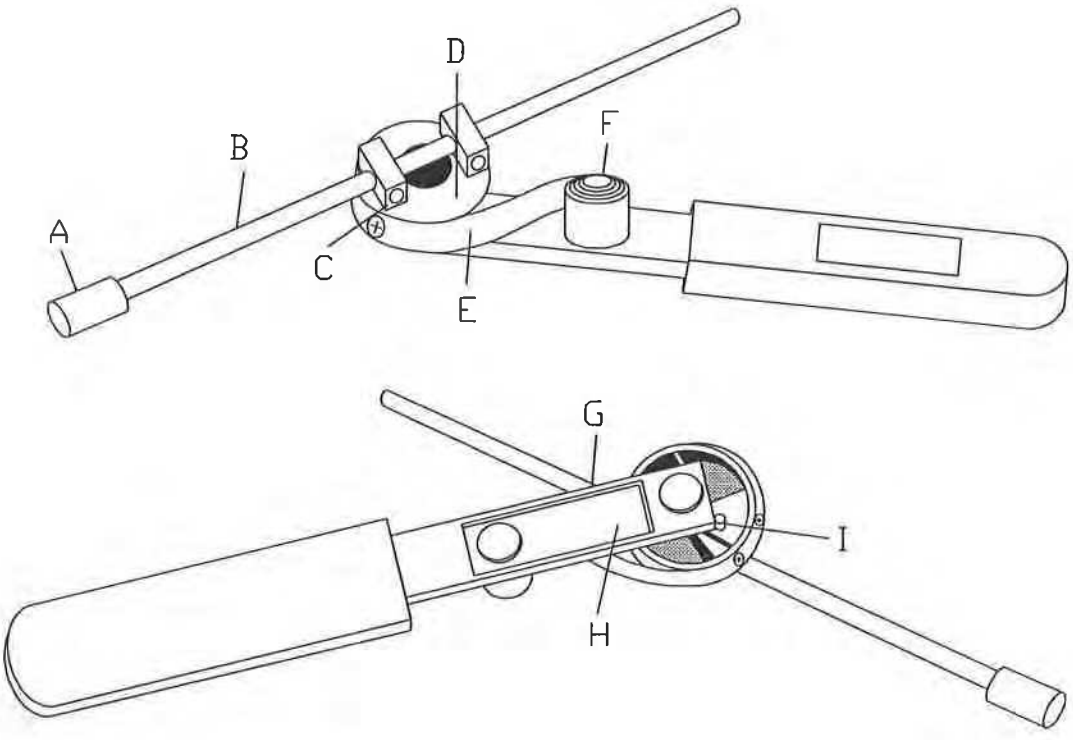
[d] The title of ASTM D 412-98a(2002)e1 is "Standard Test Methods for Vulcanized Rubber and Thermoplastic Elastomers – Tension."

[e] The title of ASTM D 1000-99 is "Standard Test Method for Pressure-Sensitive Adhesive-Coated Tapes Used for Electrical and Electronic Applications."

[f] The title of ASTM D 1056-00 is "Standard Specification for Flexible Cellular Materials – Sponge or Expanded Rubber."

[g] The title of ASTM D 1667-97 is "Standard Specification for Flexible Cellular Materials – Vinyl Chloride Polymers and Copolymers (Closed – Cell Foam)."

Figure 5.1
Sharp edge tester



SM1283

A – Head, steel, 1/2 inch diameter (12.7 mm), 3/4 inch long (19 mm)

B – Arm, steel, 1/4 inch diameter (6.4 mm), adjustable

C – Adjustment screw

D – Main drum, free to rotate on stud, sleeve bearing

E – Negator s-ring, 1/2 inch wide (12 7 mm), 6-1/2 inches long (165 mm)

F – Storage drum, free to rotate on stud, sleeve bearing

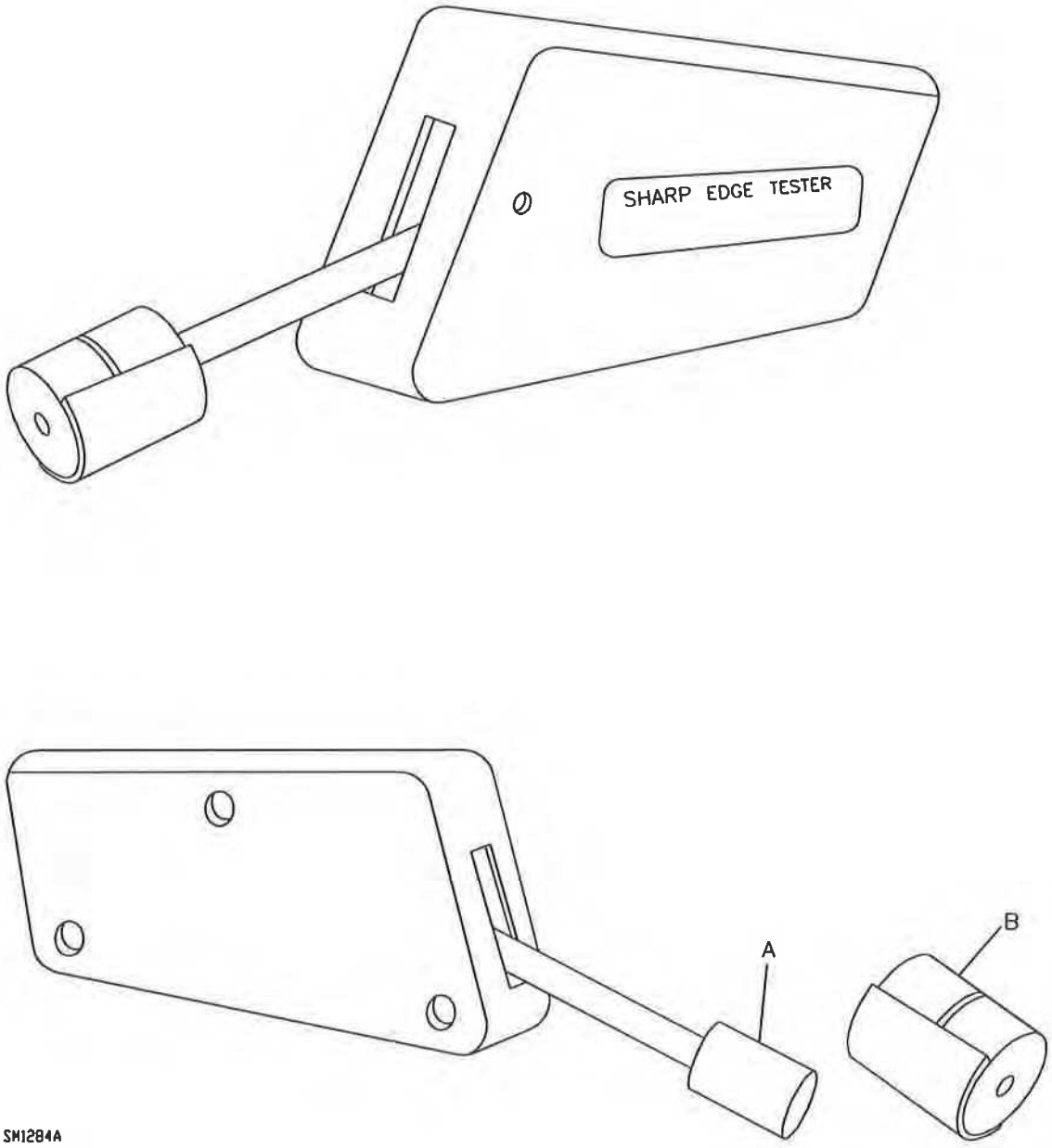
G – Adjustable wrench

H – Handle assembly

I – Stop

Figure 5.2
Sharp edge tester with tape cap (alternate construction)

Figure 5.2 revised June 1, 2004



A – Head, steel, 1/2 inch diameter (12.7 mm), 3/4 inch long (19 mm)

B – Tape cap, 5/8 inch (15.9 mm) diameter removable sleeve

6 Calibration of Tester

6.1 The sharp edge tester shall be calibrated so that a 1-1/2 lbf (6.7 N) is present at the center of the head when the arm is between stops. The length of the arm is to be adjustable for calibration purposes. See Figure 6.1 for a typical calibration procedure.

Exception: For special evaluations, when specified in the end-product standard, the force may be adjusted to a different value.

6.2 The adjustment set screws that hold the pivoted arm in place in the main drum are to be loosened.

6.3 With the handle securely held in a horizontal position, the calibration weight is to be attached to the center of the head.

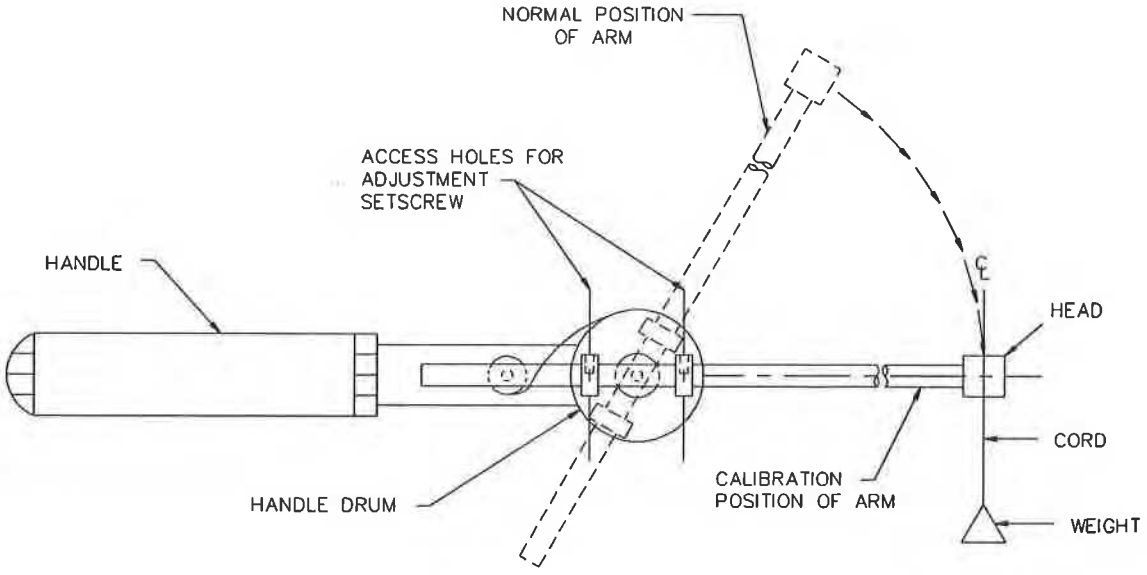
6.4 The length of the arm within the main drum is to be adjusted so that the weighted arm remains in a horizontal position with the calibration weight attached.

6.5 The adjustment setscrew(s) are to be tightened to securely lock the pivot arm in place within the main drum.

6.6 The calibration is to be rechecked and the weight removed.

No Text on This Page

Figure 6.1
Typical calibration procedure



7 Test Procedure

7.1 The curved face of the tester head shall be covered with three layers of tape in the order indicated below:

a) First Layer (Inner Layer) – Indicating type, black vinyl foam tape as described in 5.1 (b).

b) Second Layer (Middle Layer) – Sensing Tape No.2, white vinyl foam tape as described in 5.1 (c).

c) Third Layer (Outer Layer) – Sensing Tape No.1, tetrafluorethylene tape as described in 5.1 (d).

7.2 Each tape is to be applied over approximately 180 degrees of the circumference of the test head to prevent stretching of the tape.

7.3 The tapes are not to be stretched when positioned on the head. See Figure 7.1

7.4 The center of the tape-covered head of the sharp-edge tester shall be positioned on the edge to be tested in the manner illustrated in Figure 7.2. The arm of the tester shall be between stops so that the tape-covered head exerts a 1-1/2 lbf (6.7 N) on the edge. The tester shall be immediately moved along the edge a distance of 2 inches (50.8 mm) and then back to its starting position without removal of the tester from the edge. It shall then be withdrawn from the edge. The total distance of engagement between the edge and the tape-covered head is not to exceed 4 inches (101 mm). The time of travel is not to take longer than 5 seconds nor less than 2 seconds.

Exception: An edge less than 2 inches (50.8 mm) long shall be tested for a distance of twice its length. (Example: For an edge 1-1/2 inches or 41.2 mm long, the tester is to be moved along its length and back to the starting position so that the total distance of engagement between the edge and tester is 3 inches or 76.2 mm).

Figure 7.1
Preparation of head

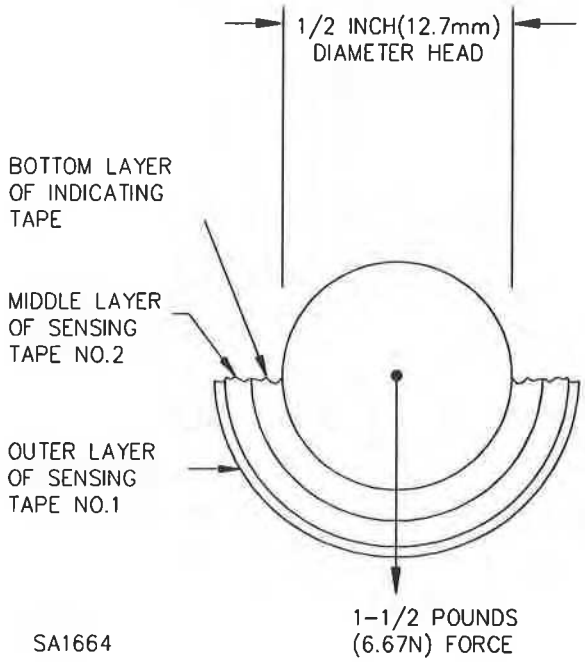
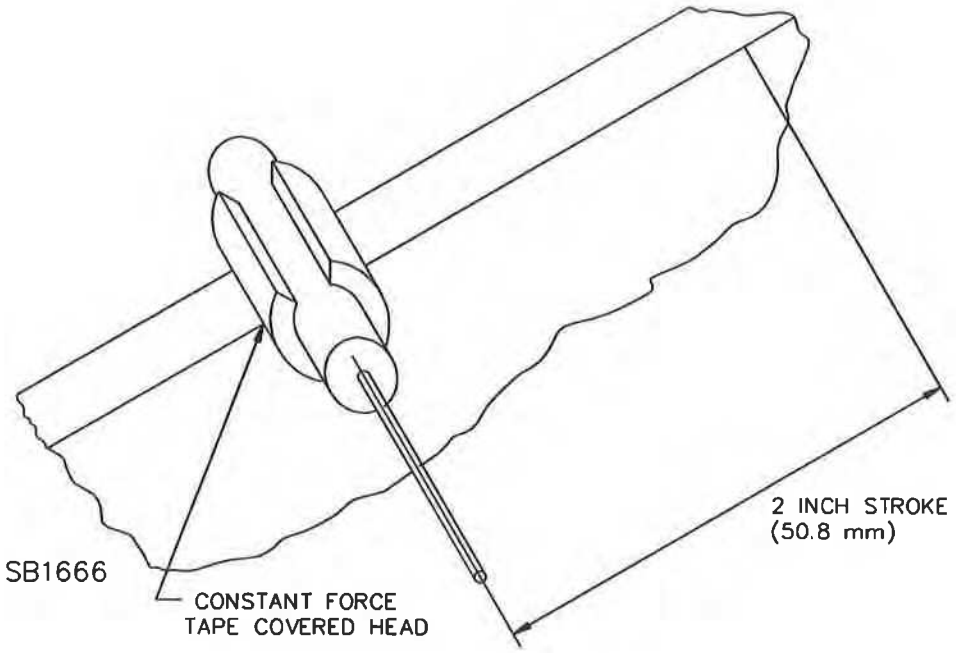
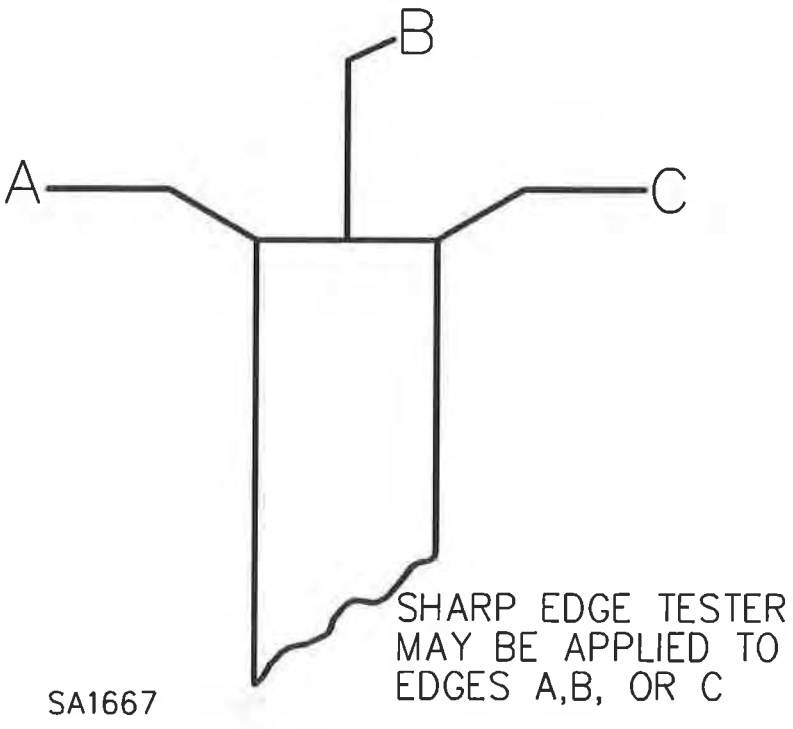


Figure 7.2
Test procedure





7.5 The tape-covered head shall be examined to determine whether or not penetration has occurred through the two sensing layers. If penetration has occurred through the two sensing layers, the black indicating tape will be visible through the resulting cut.

8 Criteria

8.1 The application of the sharp-edge tester shown in Figure 5.1 or 5.2 to an accessible edge as described in Sections 5 – 7 shall not result in the cutting through of the two outer layers of the sensing tapes.

9 Report

9.1 The report is to include each of the following items:

a) Identification of the equipment tested, including the manufacturer's identity, class of product, and the model designation.

b) Identification of each edge tested by description of its location.

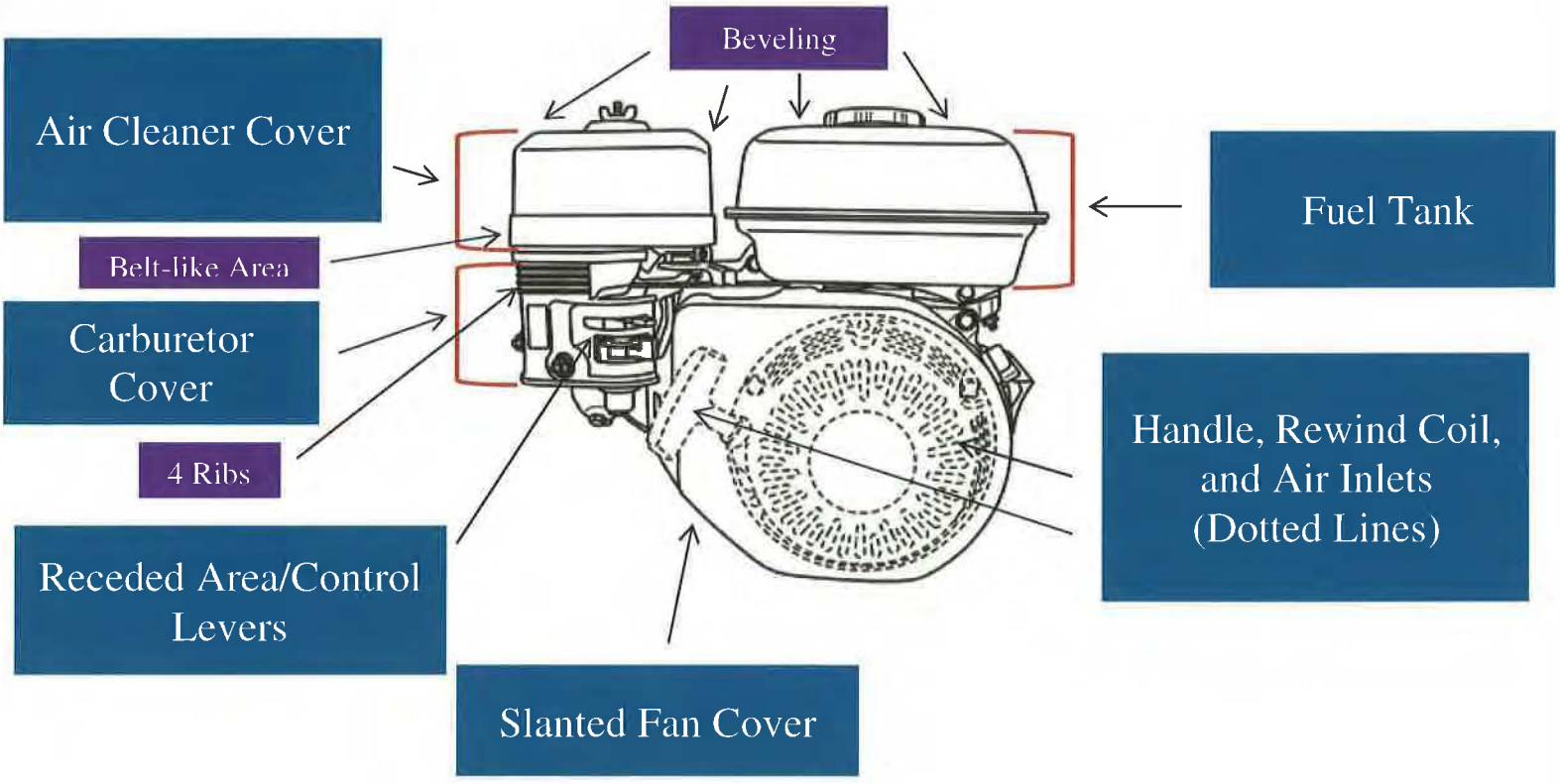
c) Record of the observation related to penetration of the sensing tapes. (Example: Acceptable or unacceptable.)

d) Date of Test.

EXHIBIT 5

Trademark Application Serial No. 78924545

Drawing of Proposed Mark



Description of Proposed Mark

The mark consists of the configuration of an engine with an overall cubic design, with a slanted fan cover, the fuel tank located above the fan cover on the right, and the air cleaner located to the left of the fuel tank. The air cleaner cover features a cube shape with beveled top outside edges, and a belt-like area on the lower portion of the cover encompassing the entire circumference and the top of the belt-like area is aligned with a rib of the fuel tank. The carburetor cover features four ribs along its outside edge and a receded area where control levers are located. The fuel tank is roughly rectangular. The engine features a beveling that runs around its top circumference.

Summary Judgment Functionality Evidence

Element of Mark	Functionality	Evidence[1]
"the configuration of an engine"	The engine: *powers equipment such as roto tillers, pressure washers, pumps etc.	Application Serial No. 78924545 goods identification Ex 17 - GX Design Memo Ex 4 – Fujita Depo, 163, 165 Ex 18, 29 – GX Brochures
"with an overall cubic design"	The overall cubic design provides: *box-type component configuration; *rectangular arrangement; *compact dimensions; *smaller package size; *lower cost; *lower fuel consumption; *compatibility with a wide range of installations; *lower center of gravity; *better stability;	Ex. 17 - GX Design Memo Ex 4 – Fujita Depo, 163, 165, 174-175, 176, 179, 184-185 Ex 6 – '385 Patent, Fig. 1 and 2, Claims 1 and 2 Ex. 25 – Application for '385 Patent, p. 4 Ex. 26 – Application for '385 Patent, p. 5-6 Ex 7 – '740 Patent, 5:26-32 Ex 9 – '690 Patent, 4:29-44 Ex 12 – '389 Patent, 1:15-17 Ex 13 - Japanese Patent App No. 57-170212, p. 6 Ex 14 - Japanese Patent S63-32344,

[1] Except as otherwise noted herein, all of the above referenced exhibits are attached to the Declaration of Donald Daugherty in Support of Opposers' Motion for Summary Judgment dated February 1, 2013. A more legible reproduction of the cited excerpts from the Hoag Deposition (Ex 1) is provided in the Supplemental Declaration of Robert N. Phillips in Support of Opposer's Motion for Summary Judgment dated March 21, 2013. The "Italian Complaint" is attached to the Declaration of Riccardo Missari in Support of Opposers' Motion for Summary Judgment dated January 31, 2013. The nearly identical Lifan Design is at paragraph 7 of Opposers' Motion to Amend Notices of Opposition filed under seal on May 31, 2012 [Dkt No. 11), and Daugherty Exhibit 1 thereto at AHGXC000064 thereto. The Honda Press Release dated August 6, 2013 is at Exhibit 1 to the Declaration of Robert N. Phillips in Support of Opposers' Reply Brief on Motion for Summary Judgment filed October 15, 2013.

	*improved safety; *improved user access and maintenance; *greater engine efficiency; *industry standard; and, *has never been advertised by Honda as an aesthetic reason to purchase or use the engine.	AHGX0061139 Ex 15 -- Meiritz Depo, 162-163 Ex 1 - Hoag Depo, 109, 167-168 Ex 2 - Conner Depo, 305-306, 387, 406, 421 Ex 18, 29 – GX Brochures Ex 24 – Photos of third party engines with overall cubic designs Lifan Design Italian Complaint ¶5.1 Honda press release dated August 6, 2013: "Honda's general purpose engines feature outstanding reliability, excellent quality, and a compact design that ensures compatibility with a wide range of installations."
"with a slanted fan cover"	The fan cover: *protects the internal, non-visible fan that spins and draws air in to cool the engine. The bottom left portion of the fan cover is slanted upward to: *follow the horizontal slant of the engine's internal cylinders, and direct the air toward the parts of the engine that need to be cooled, in the best way possible.	Ex 6 – '385 Patent, Fig. 1 item 2, 3:50-56 Ex. 7 – '740 Patent, Fig. 10 item 80, 6:12-24 Ex 8 – '430 Patent, Fig. 3 item 78, 7:52-8:24 Ex 9 – '690 Patent, Fig. 10 item 80, 7:65-8:1 Ex 10 – '533 Patent, Fig. 10 item 80, 6:32-55, 9:8-20 Ex 1 - Hoag Depo, 69-70, 83-85 Ex 2 - Conner Depo, 411-412 Ex 24 – Photos of third party engines with slanted fan covers

		Lifan Design
"the fuel tank"	The fuel tank: *holds fuel that powers the engine.	Ex 6 – '385 Patent, Fig. 1 and 2 item 4, Claims 1 and 2 Ex 1 - Hoag Depo, 108 Ex 18, 29 – GX Brochures
"located above the fan cover"	The fuel tank is located above the fan cover so that: *fuel is delivered to the engine by gravity feed; *a costly fuel pump can be eliminated; and, *for an overall compact, rectangular design.	Ex 2 - Conner Depo, 386-388, 414 Ex 1 - Hoag Depo, 108-110, 160-161 Ex 15 - Meiritz Depo, 162-163 Ex. 17 - GX Design Memo Ex 6 – '385 Patent, Fig. 1 and 2 item 4, Claims 1 and 2 Ex. 25 – Application for '385 Patent, p. 4 Ex. 26 – Application for '385 Patent, p. 5-6 Ex 13 - Japanese Patent App No. 57-170212, Fig. 2 item 4 (rear view), and p. 6 Ex 14 - Japanese Patent S63-32344, Figure 1 item 9 (rear view), and AHGX0061139 Ex 24 – Photos of third party engines with fuel tanks located above the fan covers Lifan Design
"on the right"	The fuel tank is located on the right for: *easy access by the operator; *safety, i.e. placed farthest away from the hottest and	Ex. 17 - GX Design Memo Ex 6 – '385 Patent, Fig. 1 and 2 item 4, Claims 1 and 2 Ex. 25 – Application for '385 Patent, p. 4

	most flammable parts of the engine -- the muffler cover and exhaust port—which are located in the back left portion of the engine, behind the air cleaner (not visible in the drawing of the mark); and, * for an overall compact, rectangular design.	Ex. 26 – Application for '385 Patent, p. 5-6 Ex 13 - Japanese Patent App No. 57-170212, Fig. 2 item 4 (rear view), and p. 6 Ex 14 - Japanese Patent S63-32344, Figure 1 item 9 (rear view), and AHGX0061139 Ex 2 - Conner Depo, 393-94, 413-414 Ex 1 - Hoag Depo, 110, 161-162, 164 Ex 24 – Photos of third party engines with fuel tanks located above the fan covers on the right Lifan Design
"and the air cleaner"	The air cleaner: * filters and cleans the air that is drawn into the carburetor; and, *is an internal component not visible in the drawing of the mark (it is behind the air cleaner cover).	Ex 6 – '385 Patent, Fig. 1 and 2 item 6, Fig. 4 and 5 items 8 and 9, 3:57-4:5 Ex 13 - Japanese Patent App No. 57-170212, Figure 2 item 30 (rear view) Ex 29 – GX Brochure, AHGXC000440 Ex 1 - Hoag Depo, 93
"located to the left of the fuel tank."	The air cleaner is located to the left of the fuel tank so that: * it is easily and safely accessible; *as close as possible to the carburetor (which sits directly under the air cleaner) for optimal performance; and, * for an overall compact,	Ex 17 - GX Design Memo Ex 6 – '385 Patent, Fig. 1 and 2 item 6, 3:57-4:5 Ex. 25 – Application for '385 Patent, p. 4 Ex. 26 – Application for '385 Patent, p. 5-6 Ex 13 - Japanese Patent App No.

	rectangular design.	57-170212, Figure 2 item 30, and p. 6 Ex 14 - Japanese Patent S63-32344, Fig. 1 item 13A, and AHGX0061139 Ex 1 - Hoag Depo, 161-165 Ex 15 - Meiritz Depo, 162-163 Ex 24 – Photos of third party engines with air cleaners located to the left of the fuel tanks Lifan Design
"The air cleaner cover"	The air cleaner cover: *covers and protects the internal air cleaning filter element from damage and dirt.	Ex 6 – '385 Patent, Fig. 1 and 2 item 6, 3:57-4:5 Ex 29 – GX Brochure, AHGXC000440 Ex 1 - Hoag Depo, 93
"features a cube shape"	The air cleaner cover is a cube shape: *to cover and protect the three dimensional cartridge air filter element widely used in the industry; and, *for an overall compact, rectangular design.	Ex. 17 - GX Design Memo Ex 6 – '385 Patent, Fig. 1 and 2 item 6, 3:57-4:5, Claims 1 and 2 Ex. 25 – Application for '385 Patent, p. 4 Ex. 26 – Application for '385 Patent, p. 5-6 Ex 13 - Japanese Patent App No. 57-170212, Fig. 2 item 30, and p. 6 Ex 14 - Japanese Patent S63-32344, Fig. 1 item 13A, and AHGX0061139 Ex 29 – GX Brochure, AHGXC000440 Ex 24 – Photos of third party engines with the air cleaner covers

		featuring a cube shape Lifan Design
"with beveled top outside edges"	*minor, ornamental element; *shape altered by Honda in 2011 redesign - changed from bevel to curved top edge; *immaterial to overall appearance.	Ex 2 – Connor Depo, 189-191 Ex 5 – Press releases re GX redesign Ex 29 – Brochure of GX redesign, AHGXC000437 Docket No. 14, p. 10 (change in shape of top edge "minor in nature, and overall look remains unchanged")
"and a belt like area on the lower portion of the cover encompassing the entire circumference and the top of the belt-like area is aligned with a rib of the fuel tank."	*minor, ornamental element; * shape altered by Honda in 2011 redesign – changed from a belt to a skirt; *immaterial to overall appearance; *rib of the fuel tank is a functional seam used in the manufacturing process to connect two halves of the tank.	Ex 2 – Connor Depo, 189-191 Ex 5 – Press releases re GX redesign Ex 29 – Brochure of GX redesign, AHGXC000437 Docket No. 14, p. 10 (change of belt to a skirt "minor in nature, and overall look remains unchanged") Ex 3 to Phillips Decl ISO Reply Brief– Connor Depo 418-420
"The carburetor"	The carburetor: *is an entirely functional device; *mixes droplets of gasoline and air; and, *is a dirty, complex, internal component, substantially not visible in the drawing of the mark.	Ex 1 – Hoag Depo, 88-90, 183
"cover"	The carburetor cover: *guards the carburetor against	Ex 1 - Hoag Depo, 88-90, 184 Ex 24 – Photos of third party

	being damaged; *conceals a dirty, complex internal component; and, *directs filtered air from the air cleaner into the carburetor.	engines with carburetor covers Lifan Design
"features four ribs along its outside edge"	*minor, ornamental element; *deleted by Honda in 2011 redesign; *immaterial to overall appearance.	Ex 2 – Connor Depo, 189-191 Ex 5 – Press releases re GX redesign Ex 29 – Brochure of GX redesign, AHGXC000437 Docket No. 14, p. 10 (removal of four ribs "minor in nature, and overall look remains unchanged")
"and a receded area where control levers are located."	The receded area: *allows the operator to easily and safely grip the control levers, and reduces the necessary length of the levers and protects the levers against coming into contact with other objects such as the pull rope, handle, and operator's hands. The control levers: *adjust the carburetor for the necessary operation of the engine.	Ex 1 – Hoag Depo, 164 Ex 15 - Meiritz Depo, 162-163 Ex 24 – Photos of third party engines with receded areas where control levers are located Lifan Design
"The fuel tank is roughly rectangular."	The fuel tank is roughly rectangular: *to maximize the volume of gasoline it can hold; and, *provide an overall compact, rectangular design.	Ex 2 - Conner Depo, 386-388, 414 Ex 1 - Hoag Depo, 108-110, 160-161 Ex 15 - Meiritz Depo, 162-163 Ex. 17 - GX Design Memo Ex 18, 29 – GX Brochures

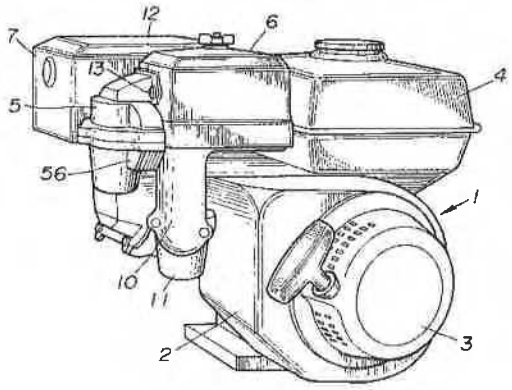
		Ex 6 – '385 Patent, Fig. 1 and 2 item 4, Claims 1 and 2 Ex. 25 – Application for '385 Patent, p. 4 Ex. 26 – Application for '385 Patent, p. 5-6 Ex 13 - Japanese Patent App No. 57-170212, Fig. 2 item 4 (rear view), and p. 6 Ex 14 - Japanese Patent S63-32344, Figure 1 item 9 (rear view), and AHGX0061139 Ex 24 – Photos of third party engines with roughly rectangular fuel tanks Lifan Design
"The engine features a beveling that runs around its top circumference."	*minor, ornamental element * shape altered by Honda in 2011 redesign – changed from bevel to curved top edge *immaterial to overall appearance.	Ex 2 – Connor Depo, 189-191 Ex 5 – Press releases re GX redesign Ex 29 – Brochure of GX redesign, AHGXC000437 Docket No. 14, p. 10 (change in shape of top edge "minor in nature, and overall look remains unchanged")

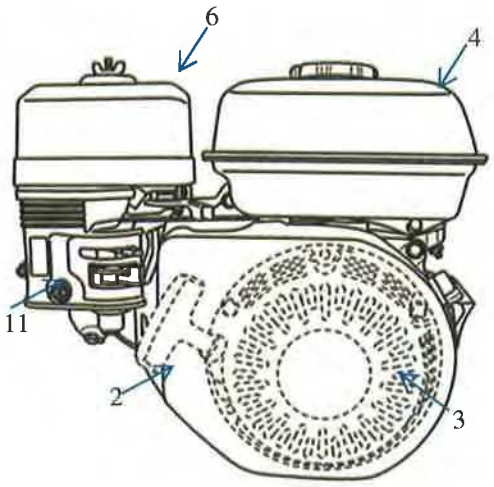
EXHIBIT 6

'385 Utility Patent Fig 1 versus '545 Trade Dress Drawing

U.S. Patent Mar. 21, 1989 Sheet 1 of 4 4,813,385

FIG. 1





Honda's '385 Utility Patent Discloses the Following Elements Depicted and Described in Honda's '545 Trade Dress Application:

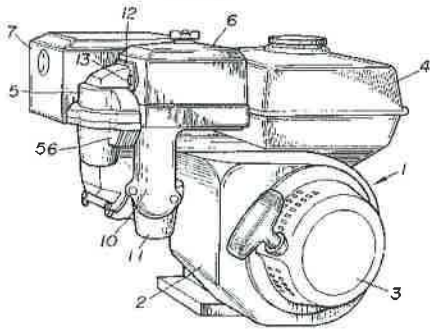
Slanted Fan Cover (Fig 1, item 2)
Handle, Rewind Coil, and Air Inlets (Fig 1, item 3)
Roughly Rectangular Fuel Tank Located above Fan Cover on the Right (Fig 1, item 4)
Cubic Shaped Air Cleaner Cover Located to the Left of the Fuel Tank (Fig 1, item 6)
Carburetor Cover Below Air Cleaner Cover (Fig 1, item 11)

EXHIBIT 7

'385 Utility Patent Fig 1 versus Third Party Engines

U.S. Patent Mar. 21, 1989 Sheet 1 of 4 4,813,385

FIG. 1

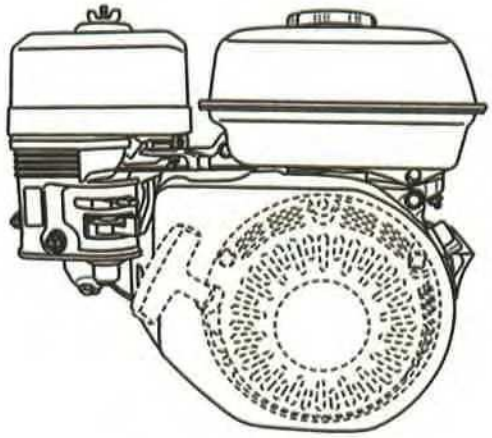


Honda's Expired '385 Utility Patent Discloses Elements Commonly Found in Third Party Engines:

Slanted Fan Cover (Fig 1, item 2)
Handle, Rewind Coil, and Air Inlets (Fig 1, item 3)
Roughly Rectangular Fuel Tank Located above Fan Cover on the Right (Fig 1, item 4)
Cubic Shaped Air Cleaner Cover Located to the Left of the Fuel Tank (Fig 1, item 6)
Carburetor Cover Below Air Cleaner Cover (Fig 1, item 11)

EXHIBIT 8

Drawing in Honda Application Serial No. 78924545



Honda's Design Changes in 2011

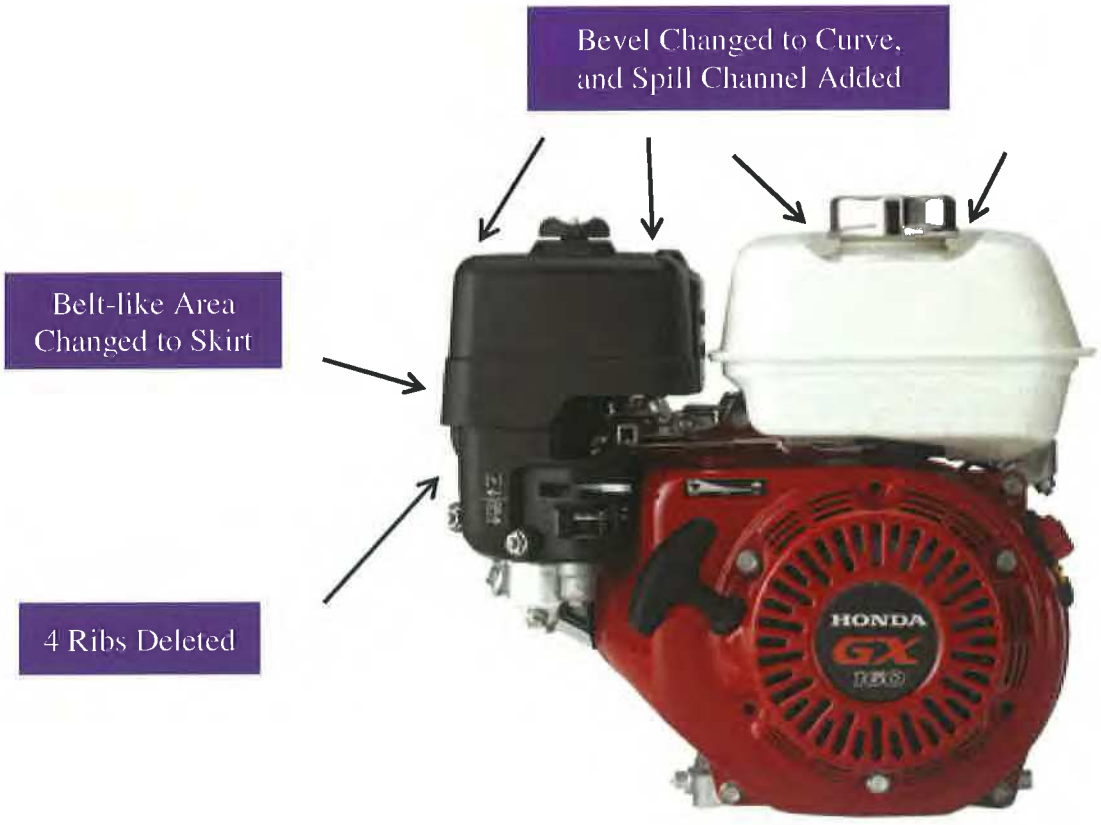
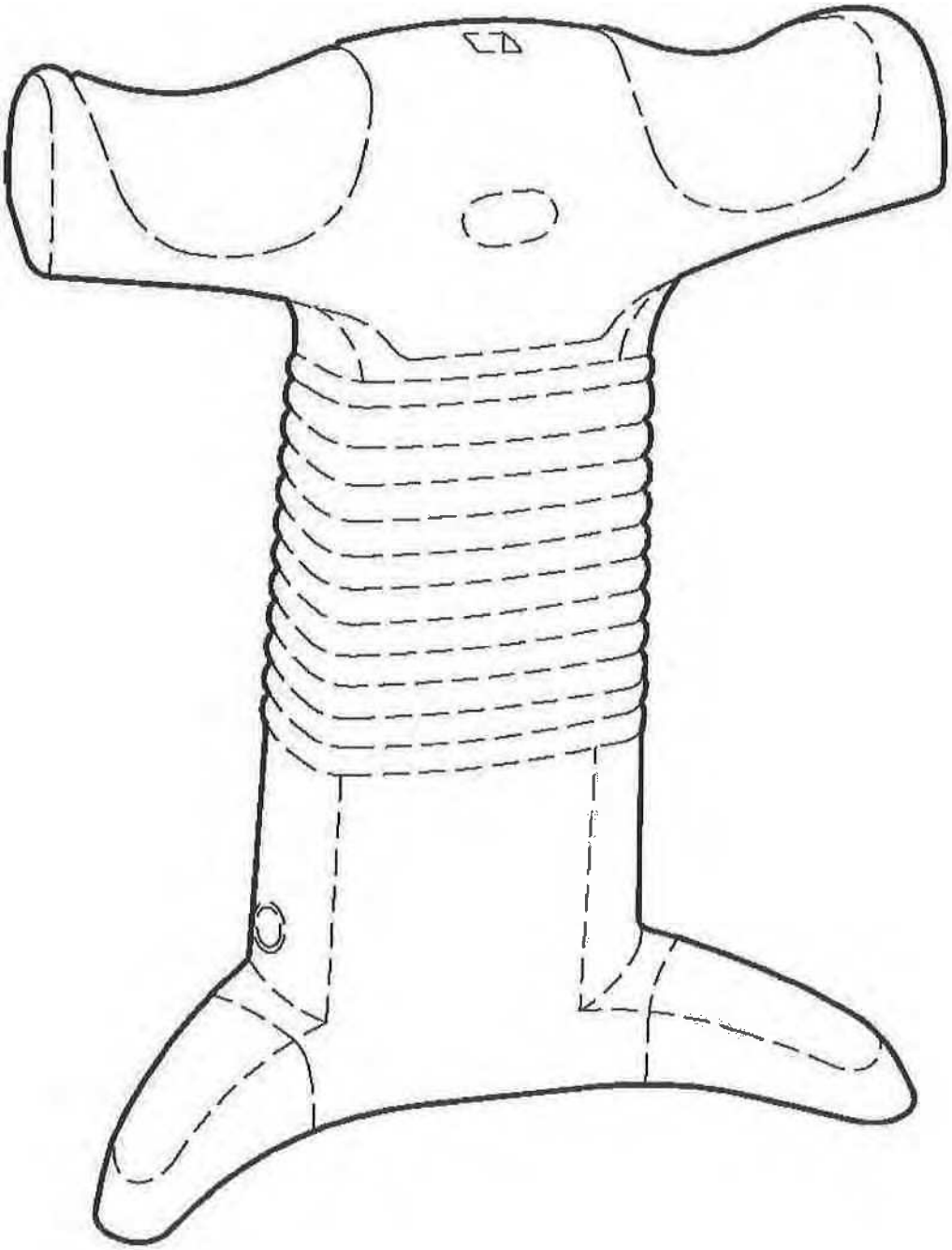


EXHIBIT 9



To:	Back in Five, LLC (trojan@trojanlawoffices.com)
Subject:	U.S. TRADEMARK APPLICATION NO. 77838661 - 11-03-5893(0
Sent:	3/30/2011 3:51:33 PM
Sent As:	ECOM116@USPTO.GOV
Attachments:	

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

APPLICATION SERIAL NO. 77838661

MARK:

77838661

CLICK HERE TO RESPOND TO THIS LETTER:
http://www.uspto.gov/teas/eTEASpageD.htm

CORRESPONDENT ADDRESS:
R. Joseph Trojan
TROJAN LAW OFFICES
9250 Wilshire Blvd., Ste. 325
Beverly Hills CA 90212

APPLICANT: Back in Five, LLC

CORRESPONDENT'S REFERENCE/DOCKET NO:
11-03-5893(0

CORRESPONDENT E-MAIL ADDRESS:
trojan@trojanlawoffices.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 3/30/2011

THIS IS A FINAL ACTION.

This Office action is in response to applicant's communication filed on February 18, 2011

FUNCTIONAL REFUSAL MADE FINAL

The proposed mark has been refused registration on the grounds that it consists of a three-dimensional configuration of a product that is functional and because the mark comprises nondistinctive trade dress without sufficient evidence that the configuration has acquired distinctiveness. Applicant was also

required to provide an amended drawing and mark description and provide additional information about the goods.

Applicant has complied with the requirements for additional information and has amended its mark description. Applicant has declined to provide a new drawing but has clarified the nature of the mark in its remarks. Applicant has attempted to limit the mark to the outline of the configuration of the mark. However, because the outline still indicates a functional mark that is also a non-distinctive product design that fails to function, the issue as to registrability is not changed by a new drawing. Accordingly, the requirement for a new drawing is withdrawn.

Applicant argues for registrations on the grounds that by limiting the mark to the profile of the product, the "distinctive appearance" created by the outline of the product overcomes any functionality. As to the issue of acquired distinctiveness, applicant argues for registration based on a prior registration for the colors used on the product and that there has been counterfeiting of the product.

Applicant's arguments have been considered and found unpersuasive for the reason(s) set forth below.

Functionality

The refusal under Trademark Act Section 2(e)(5) is now made FINAL for the reasons set forth below. *See* 15 U.S.C. §1052(e)(5); 37 C.F.R. §2.64(a).

Applicant's Mark

Applicant's mark consists of the design of the product. Specifically, the mark comprises a rounded base rounded bottom with two curved "feet" on either side of the device, a vertical column that houses electronic parts of the device that is covered with "rubberized ribbed central covering" (Decl. Lenny Sands at p 100 or Response of 7/1/2010) and at the top, a horizontal cross section with indentations for placement of the user's legs on both sides of the section. Patent Summary for U.S. Patent No. 5,777,612.

In its response on February 18, 2011 applicant again argues that the mark is registrable even if parts of it are functional. However, a determination that an applied-for configuration mark is functional constitutes an absolute bar to registration on the Principal or Supplemental Registers, regardless of any evidence of acquired distinctiveness. Trademark Act Sections 2(e)(5) and 23(c), 15 U.S.C. §§1052(e)(5), 1091(c); *see TrafFix Devices, Inc. v. Mktg. Displays, Inc.*, 532 U.S. 23, 29, 58 USPQ2d 1001, 1006 (2001); *In re Controls Corp. of Am.*, 46 USPQ2d 1308, 1311 (TTAB 1998); TMEP §1202.02(a)(iii)(A). Contrary to applicant's position, a few arbitrary or otherwise nonfunctional features included within a product configuration mark do not affect a functionality determination where the evidence shows the overall design to be functional. *See Textron, Inc. v. U.S. Int'l Trade Comm'n* , 753 F.2d 1019, 1024-27, 224 USPQ 625, 628-30 (Fed. Cir. 1985); *In re Vico Prods. Mfg. Co.*, 229 USPQ 364, 368 (TTAB 1985); TMEP §1202.02(a)(v).

Determining functionality normally involves consideration of one or more of the following factors, commonly known as the "*Morton-Norwich* factors":

(1) The existence of a utility patent that discloses the utilitarian advantages of the design sought to be registered;

(2) Advertising by the applicant that touts the utilitarian advantages of the design;

(3) Facts pertaining to the availability of alternative designs; and

(4) Facts pertaining to whether the design results from a comparatively simple or inexpensive method of manufacture.

In re Morton-Norwich Prods., Inc., 671 F.2d 1332, 1340-41, 213 USPQ 9, 15-16 (C.C.P.A. 1982); TMEP §1202.02(a)(v).

Here, applying the *Morton-Norwich* factors, the overall design is plainly functional. First, applicant has three utility patents that describe the utilitarian advantages of the design. In the summary of the invention for U.S. Patent No. 5,772,612, the use for horizontal portion of the design is for "accommodating the back of the user's knees." The indentations clearly function to form a contour to hold the legs of the user, a function that is apparent in the many pictures showing consumers using the device. *E.g.,* picture on front of the User Manual attached to the first Office action of 12/28/2009. Furthermore, U.S. Patent No. 6,443,916 describes the top of the device as a "body engaging element." *Abstract,* U.S. Patent No. 6,443,916. The *Abstract* continues, stating "the body-engaging elements preferably includes at least one surface configured for engaging a rear surface of both of the subject's legs from the knees downwards." *Id.* Applicant's utility patent confirms the functionality of the top portion of the mark comprising the "T" shape with the indentations.

U.S. Patent No. 7,179,237 describes functionality of the rubberized bellows covering vertical column that open and close to allow the device to move elliptically and vertically. In particular, the drive mechanism inside the device is "configured to move the body-engaging element through a repetitive cyclic motion." *Abstract,* U.S. Patent No. 7,179,237. The drawings on Sheet 9 and 10 of the Patent No. 7,179,237 (pp. 63 and 64 of the attachments to Applicant's response of 7/1/2010) clearly show a bellows covering of the column. The same bellows configuration is apparent in U.S. Patent No. 6,443,916 in Figure 9 and 10 (pp. 45 and 46 of the attachments to Applicant's response of 7/1/2010). The evidence attached to the Office action of 8/17/2011 shows a consistent configuration of similar rubber bellows that match the configuration of applicant's goods. Bellows expand and contract, a function that clearly allows applicant's device to move up and down in the elliptical repeated pattern indicated by applicant's patents as well as in the evidence of record. *E.g.,* pictures of rubber bellows attached to Office action of 8/17/2011 at pp. 8 – 10, 12; Applicant's User Manual attached to the first Office action of 12/28/2009. Applicant has confirmed that the bellows portion is flexible rubberized ribbing that opens and closes like an accordion, which clearly facilitates the movement of the device. *See* Responses to Request for Information in the response of February 18, 2011. Thus, like the body-engaging top portion, the configuration of the ribbed column is clearly functional matter.

As to the rounded base with the two extended feet, this feature is also functional matter. Applicant states that the rounded base and extended feet are not necessary configurations. However, the inquiry is not whether the configuration is required. Rather, the issue is whether the configuration provides utilitarian advantage; i.e., whether the product "has a particular shape because it works better in [that] shape." *Valu Eng'g, Inc. v. Rexnord Corp.* , 278 F.3d 1268, 1274, 61 USPQ2d 1422, 1425 (Fed. Cir. 2002) (internal punctuation and citation omitted); *see* TMEP §1202.02(a)(iii)(A).

Applicant's patents and the pictures of consumers using the product establish the functionality of the base of the product. Specifically, the In U.S. Patent No. 6,443,916 The base functions to contact the ground and serve as a fulcrum. *Abstract* U.S. Patent No. 5,772,612. Moreover, pictures of consumers using the device show a tilt of the product toward the person created by the rounded base. The same tilt is evident in applicant's patents. *E.g.,* drawing on first page of Patent No. 5,772,612. Moreover, the rounded base allows the user to place the body close to the device, which provides stability in the device and allows

proper placement of the buttocks against the device. In fact, applicant's brochure (User Manual attached to the first Office at p. 17 of the pdf) instructs users to "make sure the unit is snug right up to your bottom for optimum results." All of the pictures of consumers using the machine show placement of the close to the body with the base curving around the buttocks. *E.g.,* First page of User Manual at Attachment to First Office action, Attachment at p.96 of Applicant's Response of 7/1/2010, Applicant's Exhibit B online advertisements from *Solutions* (at Attachment p. 140 of Applicant's Response of 7/1/2010) and *Brookstone* (at Attachment pp. 134 and 136 of Applicant's Response of 7/1/2010), Applicant's Ex. B.

Applicant's arguments that such a design is not required miss the point. The fact is that the rounded base is a body-engaging element (similar to the top of the device) that confers the utilitarian advantage of allowing the device to be placed "snug" and close to the buttocks. Thus, the base of the device is clearly functional, as is the remainder of the device.

Applicant argues that the profile trade dress is registrable even with possible functional elements. However, the examining attorney is unable to see the non-functional elements applicant references and applicant has declined to further amend the drawing to eliminate functional material and identify non-functional matter. The profile includes all of the functional parts of the device. Moreover, if there is any non-functional material (and there is none that is apparent to the examining attorney), such material is at most *de minimis.* The functionality of the overall profile of the mark is supported by three patents and considerable other evidence. A few arbitrary or otherwise nonfunctional features included within a product or packaging configuration mark do not affect a functionality determination where the evidence shows the overall design to be functional. *See Textron, Inc. v. U.S. Int'l Trade Comm'n* , 753 F.2d 1019, 1024-27, 224 USPQ 625, 628-30 (Fed. Cir. 1985); *In re Vico Prods. Mfg. Co.*, 229 USPQ 364, 368 (TTAB 1985); TMEP §1202.02(a)(v).

Accordingly, the refusal on the basis of functionality under Trademark Act Section 2(e)(5)is hereby made FINAL. *See* 15 U.S.C. §1052(e)(5); 37 C.F.R. §2.64(a).

Applicant should note the following additional ground for refusal.

NON-DISTINCTIVE TRADE DRESS – FAILURE TO FUNCTION

For the reasons set forth below, the refusal is now made FINAL under Trademark Act Sections 1, 2 and 45 because applicant's mark consist of nondistinctive product design that are not registrable on the Principal Register without sufficient proof of acquired distinctiveness. Trademark Act Sections 1, 2 and 45, 15 U.S.C. §§1051-1052, 1127; *Wal-Mart Stores, Inc. v. Samara Bros., Inc.,* 529 U.S. 205, 210, 213-14, 54 USPQ2d 1065, 1068-69 (2000); *In re Slokevage,* 441 F.3d 957, 961, 78 USPQ2d 1395, 1398 (Fed. Cir. 2006); *see* TMEP §1202.02(b)(i), (d).

Here, the applied-for mark is not inherently distinctive because there is insufficient evidence that the configuration functions as a source identifier. Applicant has not established that the configuration is recognized as a source identifier by the public. Rather, it appears that the registered word marks are necessary to indicate the source of the goods. Moreover, the mark comprises functional elements that carry no source-identifying significance.

Acquired Distinctiveness and Trade Dress

The Supreme Court distinguished between two types of trade dress - product design and product packaging. If the trade dress falls within the category of product design, it can never be inherently

distinctive and will always require evidence of acquired distinctiveness or secondary meaning. *Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, 529 U.S. 205, 215, 54 USPQ2d 1065, 1069 (2000); TMEP §1202.02(b)(i). Here, the mark comprises product design and the issue is whether there is sufficient evidence of acquired distinctiveness to allow registration.

Product design almost invariably serves purposes other than source identification, and consumers are aware that even the most unusual product design is intended not to identify the source of the goods, but to render the product itself more useful or appealing. *See Wal-Mart Stores, Inc.*, 529 U.S. at 213, 54 USPQ2d at 1069; *In re Slokevage*, 441 F.3d 957, 962, 78 USPQ2d 1395, 1399 (Fed. Cir. 2006); TMEP §1202.02(b)(i).

Applicant's arguments and evidence have been considered and found insufficient to support a finding that the mark has acquired distinctiveness, as there is insufficient evidence of record establishing that the configuration of the goods function as a source identifier. In the response of February 18, 2011, Applicant cites U.S. Reg. No. 3844089 as evidence of acquired distinctiveness along with references to evidence from its response of 7/1/2010. However, the prior registration only supports a finding that the color scheme has acquired distinctiveness. It does not establish acquired distinctiveness as to the configuration of the device.

In its previous response of 7/1/2010, Applicant provided a declaration of the Managing Member Lenny Sands containing assertions that the mark has acquired distinctiveness. However, the declaration fails to show the public perception of the mark as a source indicator, only the opinion of the declarant. The persuasiveness of declarations as to acquired distinctiveness depends on the identity of the affiant or declarant and conclusory statements from the applicant fail to establish acquired distinctiveness. *In re Chemical Dynamics Inc.,* 839 F.2d 1569, 5 USPQ2d 1828 (Fed. Cir. 1988) (conclusionary declaration from applicant's vice-president held insufficient without the factual basis for the declarant's belief that the design had become distinctive); TMEP §1212.06(c).

Applicant also fails to provide any evidence that applicant has taken measures to associate the configuration of the goods with the source of the goods. There is simply no evidence showing marketing of the configuration of the device as a trademark. On the other hand, there is considerable evidence showing use of the prior registered word marks in association with the device, indicating a need to establish source with the word marks due to lack of function of the design as a trademark.

As to the view that counterfeiting activities show secondary source, this argument is also unpersuasive. Applicant's evidence supports the opposite finding. In Exhibit D of the response of 7/1/2010 (at pp. 146 – 158), the overwhelming majority websites show the device associated with applicant's registered word marks "BACK2LIFE," "BACK 2 LIFE" and "BACK TO LIFE." U.S. Reg. Nos. 3521395, 3558192, and 3581450 (attached to Office action of 8/17/2010). Therefore, the source-identification function is accomplished by misuse of applicant's registered *word mark*, not the configuration of the goods. Such evidence supports a finding that the configuration lacks sufficient source-identifying significance and requires an association with the word mark, which contradicts applicant's argument that the public views the configuration of the product as a source identifier.

Of the two counterfeits that do not use applicant's registered word mark, both examples use word marks that are confusingly similar to the registered word marks, specifically "BACK2NATURE" (pp. 147 and 150 of Response of 7/1/2010) and "BACK LIFE (p. 153 of Response of 7/1/2010)." In the case of "BACK2NATURE" it uses applicant's registered word mark "BACK2LIFE" parenthetically. *At* pp. 147 and 150. There is only one example with a picture that does not use applicant's registered word mark or a similar word mark. *At* p. 156 of Response of 7/1/2010. However, only part of the webpage is visible.

It is possible that applicant's registered word marks could be used on the non-visible portions of the word mark. In any event, one instance of usage by a third party where the entire web page is not visible is wholly insufficient evidence of acquired distinctiveness. In short, rather than show secondary source, applicant's counterfeit evidence supports the view that the configuration lacks any distinctiveness and instead relies upon the registered word marks to indicate the source of the goods.

An applicant bears the burden of proving that a mark has acquired distinctiveness. *See Yamaha Int'l Corp. v. Hoshino Gakki Co.*, 840 F.2d 1572, 1578-79, 6 USPQ2d 1001, 1006 (Fed. Cir. 1988); *In re Meyer & Wenthe, Inc.*, 267 F.2d 945, 949, 122 USPQ 372, 374-75 (C.C.P.A. 1959); TMEP §1212.01.

As applicant has not proved that the configuration of the device has acquired distinctiveness, the refusal citing nondistinctive product design due to a lack of acquired distinctiveness is now made FINAL.

Conclusion
Applicant's mark consists of purely functional elements and is thus, unregistrable. Moreover, even if the mark were capable, there is insufficient evidence of acquired distinctiveness to find the product design functions as a trademark. Accordingly, the refusals are now made final. Because the mark is also functional, applicant may not amend the application to the Supplemental Register.

PROPER RESPONSE

If applicant does not respond within six months of the date of issuance of this final Office action, the application will be abandoned. 15 U.S.C. §1062(b); 37 C.F.R. §2.65(a). Applicant may respond to this final Office action by:

(1) Submitting a response that fully satisfies all outstanding requirements, if feasible; and/or

(2) Filing an appeal to the Trademark Trial and Appeal Board, with an appeal fee of $100 per class.

37 C.F.R. §§2.6(a)(18), 2.64(a); TBMP ch. 1200; TMEP §714.04.

In certain rare circumstances, a petition to the Director may be filed pursuant to 37 C.F.R. §2.63(b)(2) to review a final Office action that is limited to procedural issues. 37 C.F.R. §2.64(a); TMEP §714.04; *see* 37 C.F.R. §2.146(b); TBMP §1201.05; TMEP §1704 (explaining petitionable matters). The petition fee is $100. 37 C.F.R. §2.6(a)(15).

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TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/teas/eTEASpageD.htm. Please wait 48-72 hours from the issue/mailing date before using TEAS, to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about

the Office action itself, please contact the assigned examining attorney. **Do not respond to this Office action by e-mail; the USPTO does not accept e-mailed responses**.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at http://tarr.uspto.gov/. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see http://www.uspto.gov/trademarks/process/status/.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at http://www.uspto.gov/teas/eTEASpageE.htm.

To:	Back in Five, LLC (trojan@trojanlawoffices.com)
Subject:	U.S. TRADEMARK APPLICATION NO. 77838661 - 11-03-5893(0
Sent:	3/30/2011 3:51:35 PM
Sent As:	ECOM116@USPTO.GOV
Attachments:	

IMPORTANT NOTICE REGARDING YOUR U.S. TRADEMARK APPLICATION

USPTO OFFICE ACTION HAS ISSUED ON 3/30/2011 FOR SERIAL NO. 77838661

Please follow the instructions below to continue the prosecution of your application:

TO READ OFFICE ACTION: Click on this **link** or go to **http://portal.uspto.gov/external/portal/tow** and enter the application serial number to **access** the Office action.

PLEASE NOTE: The Office action may not be immediately available but will be viewable within 24 hours of this e-mail notification.

RESPONSE IS REQUIRED: You should carefully review the Office action to determine (1) how to respond; and (2) the applicable **response time period**. Your response deadline will be calculated from **3/30/2011** (or sooner if specified in the office action).

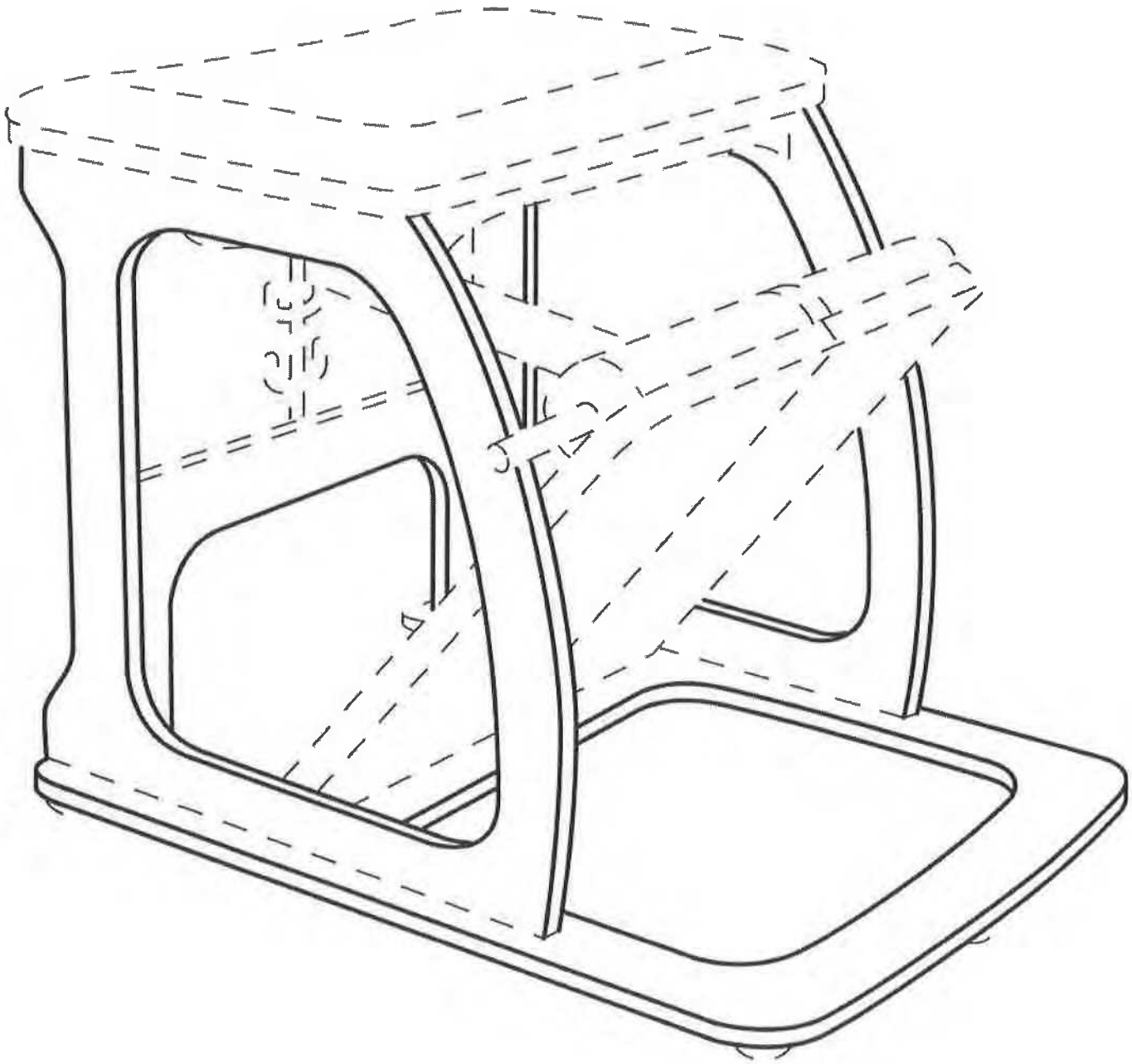
Do NOT hit "Reply" to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System Response Form.

HELP: For *technical* assistance in accessing the Office action, please e-mail **TDR@uspto.gov**. Please contact the assigned examining attorney with questions about the Office action.

WARNING

Failure to file the required response by the applicable deadline will result in the ABANDONMENT of your application.

EXHIBIT 10



UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

U.S. APPLICATION SERIAL NO. 85839057

MARK:

85839057

CORRESPONDENT ADDRESS:
GAYLE L. STRONG
GREENBERG TRAURIG, LLP
1200 17TH ST STE 2400
DENVER, CO 80202-5858

CLICK HERE TO RESPOND TO
http://www.uspto.gov/trademarks/teas/r

APPLICANT: Balanced Body, Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO :
075886-01850
CORRESPONDENT E-MAIL ADDRESS:

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE:

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SUMMARY OF ISSUES that applicant must address:

- Section 2(e)(5) Refusal – Functional Product Design
- Sections 1, 2, and 45 Refusal – Nondistinctive Product Design
- Sections 1, 2, and 45 Refusal – Failure to Function as a Trademark
- Substitute Specimen Required
- Request for Information

OFFICE SEARCH

The trademark examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d).

SECTION 2(e)(5) REFUSAL – FUNCTIONAL PRODUCT DESIGN

Registration is refused because the applied-for mark, which consists of a three-dimensional configuration of the goods, appears to be a functional design for such goods. Trademark Act Section 2(e)(5), 15 U.S.C. §1052(e)(5); *see* TMEP §1202.02(a)-(a)(ii). A feature is functional if it is "'essential to the use or purpose of the [product]'" or "'it affects the cost or quality of the [product].'" *TrafFix Devices, Inc. v. Mktg. Displays, Inc.*, 532 U.S. 23, 33, 58 USPQ2d 1001, 1006 (2001) (quoting *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159, 165, 34 USPQ2d 1161, 1163-64 (1995)); *Inwood Labs., Inc., v. Ives Labs., Inc.*, 456 U.S. 844, 850 n.10, 214 USPQ 1, 4 n.10 (1982); TMEP §1202.02(a)(iii)(A).

In the present case, the applied-for mark consists of specified components of "an exercise apparatus known as a step chair," namely, "the shapes of the two side panels, the back panel, and the base panel" of the step chair. These panels, as shown in the drawing of the mark, constitute the "frame" of the step chair, the shape of which is functional for the reasons set forth below.

Determining functionality normally involves consideration of one or more of the following factors, commonly known as the "*Morton-Norwich* factors":

> (1) The existence of a utility patent that discloses the utilitarian advantages of the product or packaging design sought to be registered.
>
> (2) Advertising by the applicant that touts the utilitarian advantages of the design.
>
> (3) Facts pertaining to the availability of alternative designs.
>
> (4) Facts pertaining to whether the design results from a comparatively simple or inexpensive method of manufacture.

In re Becton, Dickinson & Co., 675 F.3d 1368, 1374-75, 102 USPQ2d 1372, 1377 (Fed. Cir. 2012); *In re Morton-Norwich Prods., Inc.*, 671 F.2d 1332, 1340-41, 213 USPQ 9, 15-16 (C.C.P.A. 1982); TMEP §1202.02(a)(v).

In the present case, the first and second factors weigh strongly in favor of a finding of functionality, while the third and fourth factors are neutral until further information is provided by the applicant in response to the Request for Information, below.

First, a utility patent claiming the design features at issue is strong evidence that those features are functional. *TrafFix Devices, Inc. v. Mktg. Displays, Inc.*, 532 U.S. 23, 29-30, 58 USPQ2d 1001, 1005 (2001); *In re Becton, Dickinson & Co.*, 675 F.3d 1368, 1375, 102 USPQ2d 1372, 1377 (Fed. Cir. 2012); *see* TMEP §1202.02(a)(iv), (a)(v)(A). However, a patent need not claim the exact configuration for which trademark protection is sought to prove functionality. *See In re Becton, Dickinson & Co.*, 675 F.3d at 1375, 102 USPQ2d at 1377 (citing *TrafFix Devices, Inc. v. Mktg. Displays, Inc.*, 532 U.S. at 32-33, 34-35, 58 USPQ2d at 1005). "[S]tatements in a patent's specification illuminating the purpose served by a design may constitute equally strong evidence of functionality." *Id.*

Applicant's website references U.S. Patent No. 6,916,279 in conjunction with the EXO® step chair, and that patent includes a claim for "an exercise apparatus comprising . . a frame . . . ." Furthermore, the patent explains that the frame of the apparatus is "a basic box-like structure designed to rest on a horizontal surface such as a floor," and indicates that the "anchor device" described in the patent must be attached to the frame for support purposes.

From this patent, which is attached hereto, it is apparent that the shape of the "base panel" in the applied-for mark is "designed to rest on a horizontal surface such as a floor," and is therefore functional. Furthermore, all of the panels, when taken together, constitute the "frame" which provides structural support to the apparatus, as explained in the above-referenced patent. The shape of the frame is therefore functional for structural purposes.

Additionally, applicant's website, a screenshot of which is attached hereto, extols the "lightweight" feature of the EXO® step chair, which allows it to be "easily carried and/or stacked by one person." One of the design elements allowing for the apparatus to be "lightweight" is the cut-out shapes in the applied-for mark, which allow for the apparatus to be lighter-weight than would be the case if the sides were solid panels. Therefore, the cut-out design of the panels is functional for the purpose of making the apparatus more lightweight.

Finally, the curved front-facing edge on each of the side panels is functional because the curvature matches the path the "steps" follow as they move up and down during use of the apparatus, and they therefore serve as essentially a "track" for those steps. This is shown by the fact that step chairs produced by other manufacturers share the basic curved shape on the forward-facing edge of the side panels, as illustrated by the attached screenshots from the GRATZ, PeakPilates, and EMP websites.

Material obtained from the Internet is generally accepted as competent evidence. *See In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-03 (TTAB 2009) (accepting Internet evidence to show relatedness of goods in a likelihood of confusion determination); *In re Rodale Inc.*, 80 USPQ2d 1696, 1700 (TTAB 2006) (accepting Internet evidence to show genericness); *In re White*, 80 USPQ2d 1654, 1662 (TTAB 2006) (accepting Internet evidence to show false suggestion of a connection); *In re Joint-Stock Co. "Baik"*, 80 USPQ2d 1305, 1308-09 (TTAB 2006) (accepting Internet evidence to show geographic significance); *In re Consol. Specialty Rests. Inc.*, 71 USPQ2d 1921, 1927-29 (TTAB 2004) (accepting Internet evidence to show geographic location is well-known for particular goods); *In re Gregory*, 70 USPQ2d 1792, 1793, 1795 (TTAB 2004) (accepting Internet evidence to show surname significance); *In re Fitch IBCA Inc.*, 64 USPQ2d 1058, 1060-61 (TTAB 2002) (accepting Internet evidence to show descriptiveness); TBMP §1208.03; TMEP §710.01(b).

Applicant should note the following additional grounds for refusal.

SECTION 1, 2, AND 45 – NONDISTINCTIVE PRODUCT DESIGN

Registration is also refused because the applied-for mark consists of a nondistinctive product design or nondistinctive features of a product design that is not registrable on the Principal Register without sufficient proof of acquired distinctiveness. Trademark Act Sections 1, 2, and 45, 15 U.S.C. §§1051-1052, 1127; *Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, 529 U.S. 205, 210, 213-14, 54 USPQ2d 1065, 1068-69 (2000); *In re Slokevage*, 441 F.3d 957, 961, 78 USPQ2d 1395, 1398 (Fed. Cir. 2006); *see* TMEP §1202.02(b)(i).

In response to this refusal, applicant may submit evidence that the applied-for mark has acquired distinctiveness under Trademark Act Section 2(f) by submitting examples of advertising and promotional materials that specifically promote the applied-for mark as a trademark in the United States, dollar figures for advertising devoted to such promotion, dealer and consumer statements of recognition of the applied-for mark as a trademark, and any other evidence that establishes recognition of the matter as a mark for the goods. *See* 37 C.F.R. §2.41(a); TMEP §§1212.06 *et seq.* The evidence must relate to the promotion and recognition of the specific configuration embodied in the applied-for mark and not to the goods in general.

See, e.g., *In re ic! berlin brillen GmbH*, 85 USPQ2d 2021, 2023 (TTAB 2008); *In re Edward Ski Prods. Inc.*, 49 USPQ2d 2001, 2005 (TTAB 1999); *In re Pingel Enter. Inc.*, 46 USPQ2d 1811, 1822 (TTAB 1998).

In determining whether the applied-for mark has acquired distinctiveness, the following factors are generally considered: (1) length and exclusivity of use of the mark in the United States by applicant; (2) the type, expense and amount of advertising of the mark in the United States; and (3) applicant's efforts in the United States to associate the mark with the source of the goods, such as in unsolicited media coverage and consumer studies. *See In re Steelbuilding.com*, 415 F.3d 1293, 1300, 75 USPQ2d 1420, 1424 (Fed. Cir. 2005). A showing of acquired distinctiveness need not consider all of these factors, and no single factor is determinative. *In re Steelbuilding.com*, 415 F.3d at 1300, 75 USPQ2d at 1424; *see* TMEP §§1212.06 *et seq.*

In establishing acquired distinctiveness, applicant may not rely on use other than use in commerce that may be regulated by the United States Congress. Use solely in a foreign country or between two foreign countries is not evidence of acquired distinctiveness in the United States. *In re Rogers*, 53 USPQ2d 1741, 1746 (TTAB 1999); TMEP §§1010, 1212.08.

As an alternative to submitting evidence of acquired distinctiveness, applicant may amend the application to the Supplemental Register. Trademark Act Section 23, 15 U.S.C. §1091; *see* 37 C.F.R. §§2.47, 2.75(a); TMEP §§816, 1202.02(b)(i).

Applicant should note, however, that evidence of acquired distinctiveness or amendment to the Supplemental Register would overcome only this refusal based upon lack of inherent distinctiveness. The refusal under Section 2(e)(5) of the Act, above, may still serve as a bar to registration since a determination that an applied-for configuration mark is functional constitutes an absolute bar to registration on the Principal or Supplemental Registers, regardless of any evidence of acquired distinctiveness. Trademark Act Sections 2(e)(5) and 23(c), 15 U.S.C. §§1052(e)(5), 1091(c); *see TrafFix Devices, Inc. v. Mktg. Displays, Inc.*, 532 U.S. 23, 29, 58 USPQ2d 1001, 1006 (2001); *In re Controls Corp. of Am.*, 46 USPQ2d 1308, 1311 (TTAB 1998); TMEP §1202.02(a)(iii)(A).

Applicant should note the following additional ground for refusal.

SECTIONS 1, 2, AND 45 REFUSAL – FAILURE TO FUNCTION AS A TRADEMARK

Registration is also refused because the applied-for mark, as used on the specimen of record, does not function as a trademark to identify and distinguish applicant's goods from those of others and to indicate the source of applicant's goods. Trademark Act Sections 1, 2, and 45, 15 U.S.C. §§1051-1052, 1127; *see In re Phoseon Tech., Inc.*, 103 USPQ2d 1822, 1827-28 (TTAB 2012); *In re Remington Prods., Inc.*, 3 USPQ2d 1714, 1715 (TTAB 1987); TMEP §§904.07(b); 1202 *et seq.*

The applied-for mark, as shown on the specimen, does not function as a trademark because the context surrounding the photographs of the "step chair" equipment on the specimen of record does not point to the shapes of the side panels, back panel, or base panel as serving a source-indicating function. The marks which appear to be source indicating on the specimen are "BALANCED BODY" and "EXO® CHAIR," and a consumer would likely view those as the only indicators of source present on the specimen. The photographs of the step chair would be perceived as serving simply to illustrate the goods for informational purposes, rather than indicating the source of those goods. Not every word, design, symbol or slogan used in the sale or advertising of goods functions as a mark, even though an individual may have adopted it with the intent to do so. The USPTO will not register a designation unless purchasers would be

likely to regard it as a source-indicator for the goods. *In re Manco, Inc.*, 24 USPQ2d 1938 (TTAB 1992); TMEP §1202.

Applicant may overcome this refusal by submitting a substitute specimen showing proper trademark usage of the applied-for mark, following the instructions for submitting a substitute specimen, below. However, the refusal under Section 2(e)(5) of the Act, above, may still serve as a bar to registration.

Applicant must respond to the requirements set forth below.

SUBSTITUTE SPECIMEN REQUIRED

Additionally, the web catalog or web page specimen is not acceptable as a display associated with the goods because it fails to include the means for ordering the goods, and thus appears to be mere advertising material. *See In re Sones*, 590 F.3d 1282, 1286-89, 93 USPQ2d 1118, 1122-24 (Fed. Cir. 2009); *In re Azteca Sys., Inc.*, 102 USPQ2d 1955, 1957 (TTAB 2012); *In re Genitope Corp.*, 78 USPQ2d 1819, 1822 (TTAB 2006); TMEP §§904.03(i) *et seq.*; *cf. Lands' End, Inc. v. Manbeck* , 797 F. Supp. 511, 513-14, 24 USPQ2d 1314, 1316 (E.D. Va. 1992).

Advertising material, which merely tells prospective purchasers about the goods or promotes the sale of the goods, is generally not acceptable as a specimen to show trademark use in connection with goods. *See In re Genitope Corp.*, 78 USPQ2d at 1822; *In re MediaShare Corp.*, 43 USPQ2d 1304, 1307 (TTAB 1997); TMEP §904.04(b), (c). However, a web catalog, web page, or similar specimen is acceptable as a display associated with the goods if it includes (1) a picture or textual description of the identified goods, (2) the mark appearing in association with the goods, and (3) the means for ordering the goods. *See In re Sones*, 590 F.3d at 1286-89, 93 USPQ2d at 1122-24; *In re Genitope Corp.*, 78 USPQ2d at 1822; TMEP §§904.03(i) *et seq.*; *cf. Lands' End, Inc. v. Manbeck* , 797 F. Supp. at 513-14, 24 USPQ2d at 1316.

An application based on Trademark Act Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each class of goods. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a). Section 45 requires use of the mark "on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto." 15 U.S.C. §1127; *see* 37 C.F.R. §2.56(b)(1); TMEP §§904.03, 904.04(b), (c).

Therefore, applicant must submit the following:

(1) A substitute specimen showing the mark in use in commerce for each class of goods specified in the application.

(2) The following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: "**The substitute specimen was in use in commerce at least as early as the filing date of the application.**" 37 C.F.R. §2.59(a); TMEP §904.05; *see* 37 C.F.R. §2.193(e)(1). If submitting a substitute specimen requires an amendment to the dates of use, applicant must also verify the amended dates. 37 C.F.R. §2.71(c); TMEP §904.05.

Examples of specimens for goods are tags, labels, instruction manuals, containers, or photographs that show the mark on the actual goods or packaging. *See* TMEP §§904.03 *et seq.* And, as specified above, w ebpages are also acceptable specimens for goods when they include a picture or textual description of the goods associated with the mark and the means to order the goods, such as an "Add to Cart" button or an "Order Now" link. TMEP §904.03(i). In addition, the applied-for mark must be used in a source-

indicating fashion in order for it to function as a trademark, as noted above.

If applicant cannot satisfy the above requirements, applicant may amend the application from a use in commerce basis under Section 1(a) to an intent to use basis under Section 1(b), for which no specimen is required. *See* TMEP §806.03(c). However, if applicant amends the basis to Section 1(b), registration will not be granted until applicant later amends the application back to use in commerce by filing an acceptable allegation of use with a proper specimen. *See* 15 U.S.C. §1051(c), (d); 37 C.F.R. §§2.76, 2.88; TMEP §1103.

To amend to Section 1(b), applicant must submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: "**Applicant has had a bona fide intention to use the mark in commerce on or in connection with the goods listed in the application as of the filing date of the application.**" 37 C.F.R. §2.34(a)(2); TMEP §806.01(b); *see* 15 U.S.C. §1051(b); 37 C.F.R. §§2.35(b)(1), 2.193(e)(1).

Pending receipt of a proper response, registration is refused because the specimen does not show the applied-for mark in use in commerce as a trademark. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

REQUEST FOR INFORMATION

Applicant must provide the following information and documentation regarding the applied-for three-dimensional configuration mark:

> (1) A written statement as to whether the applied-for mark, or any feature(s) thereof, is or has been the subject of a design or utility patent or patent application, including expired patents and abandoned patent applications. Applicant must also provide copies of the patent and/or patent application documentation.
>
> (2) Advertising, promotional, and/or explanatory materials concerning the applied-for configuration mark, particularly materials specifically related to the design feature(s) embodied in the applied-for mark.
>
> (3) A written explanation and any evidence as to whether there are alternative designs available for the feature(s) embodied in the applied-for mark, and whether such alternative designs are equally efficient and/or competitive. Applicant must also provide a written explanation and any documentation concerning similar designs used by competitors.
>
> (4) A written statement as to whether the product design or packaging design at issue results from a comparatively simple or inexpensive method of manufacture in relation to alternative designs for the product/container. Applicant must also provide information regarding the method and/or cost of manufacture relating to applicant's goods.
>
> (5) Any other evidence that applicant considers relevant to the registrability of the applied-for configuration mark.

See 37 C.F.R. §2.61(b); *In re Morton-Norwich Prods., Inc.*, 671 F.2d 1332, 1340-41, 213 USPQ 9, 15-16 (C.C.P.A. 1982); TMEP §§1202.02(a)(v) *et seq.*

Any document filed with the USPTO becomes part of the official public application record and will not be

returned or removed. TMEP §§404, 814. If any of the information requested above is confidential or applicant does not want such information to become part of the public record for a valid reason, applicant should submit an explanation of those circumstances or redact confidential portions prior to submission. *See* TMEP §814. Applicants are not required to submit confidential information into the record; a written explanation or summary of that information may suffice. *Id.*

Regarding the requirement for this information, the Trademark Trial and Appeal Board and its appeals court have recognized that the necessary technical information for *ex parte* determinations as to functionality is usually more readily available to an applicant, and thus an applicant is normally the source of most of the evidence in these cases. *In re Teledyne Indus. Inc.*, 696 F.2d 968, 971, 217 USPQ 9, 11 (Fed. Cir. 1982); *see In re Babies Beat Inc.*, 13 USPQ2d 1729, 1731 (TTAB 1990) (holding registration was properly refused where applicant failed to comply with trademark examining attorney's request for copies of patent applications and other patent information); TMEP §1202.02(a)(v).

Failure to respond to this request for information may be an additional ground for refusing registration. *See In re Cheezwhse.com, Inc.*, 85 USPQ2d 1917, 1919 (TTAB 2008); *In re DTI P'ship LLP* , 67 USPQ2d 1699, 1701 (TTAB 2003); TMEP §814.

RESPONSE GUIDELINES

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §2.191; TMEP §§304.01-.02, 709.04-.05.

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(571) 272-5271
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WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint

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US006916279B2

(12) **United States Patent**
Endelman

(10) **Patent No.: US 6,916,279 B2**
(45) **Date of Patent: Jul. 12, 2005**

(54) **DEVICE FOR ATTACHING AN ELASTIC MEMBER TO AN EXERCISE APPARATUS**

(75) Inventor: **Ken Endelman**, Sacramento, CA (US)

(73) Assignee: **Balanced Body, Inc.**, Sacramento, CA (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) Appl. No.: **10/745,322**

(22) Filed: **Dec. 22, 2003**

(65) **Prior Publication Data**

US 2004/0138034 A1 Jul. 15, 2004

Related U.S. Application Data

(63) Continuation-in-part of application No. 10/084,277, filed on Feb. 25, 2002.

(51) **Int. Cl.**[7] **A63B 21/00**
(52) **U.S. Cl.** **482/137**; 482/129; 482/123
(58) **Field of Search** 482/137, 121, 482/130; 248/68.1, 65, 300, 301, 304, 302, 200

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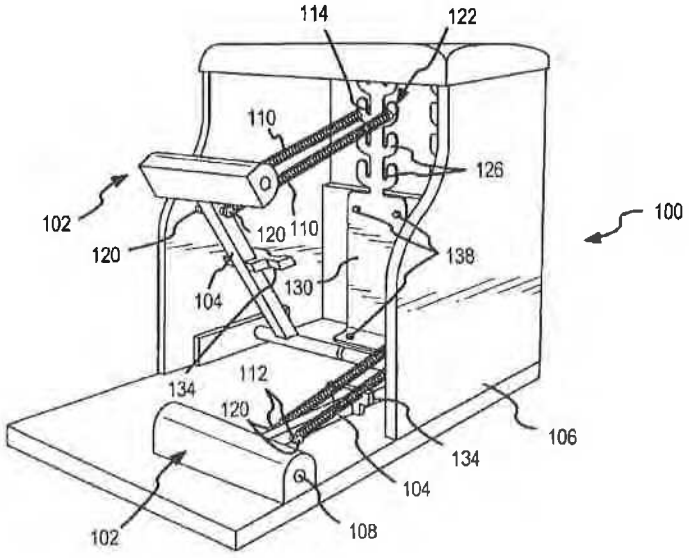
Primary Examiner—Jerome W. Donnelly
(74) *Attorney, Agent, or Firm*—John R. Wahl, Esq.; Greenbero Traurig, LLP

(57) **ABSTRACT**

An anchor device for elastically resistive exercise apparatus is disclosed. The cactus-tree anchor device has a rigid elongated vertical backbone. Protruding from the elongated backbone is a plurality of curved, upward-pointing arms resembling the trunk and arms of a Saguaro cactus. Pairs of these curved arms protrude from opposite sides of the elongated backbone. These arms facilitate the easy connection of elastic members, such as coil springs, to the anchor device while helping to prevent elastic members from becoming inadvertently dislodged during expansion and contraction of the elastic member. Mounting members located at upper and lower ends of the vertical backbone allow the anchor device to be mounted on or within the exercise apparatus. The anchor device is particularly adapted for use in a Pilates combination chair exercise apparatus.

6 Claims, 3 Drawing Sheets



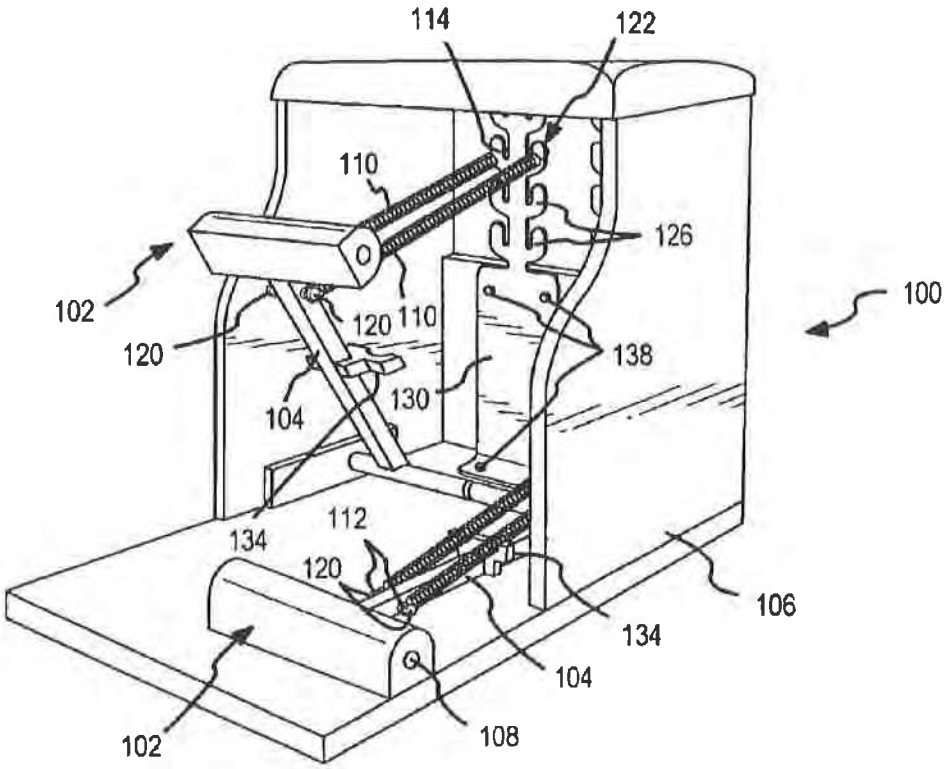

114
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FIG.1

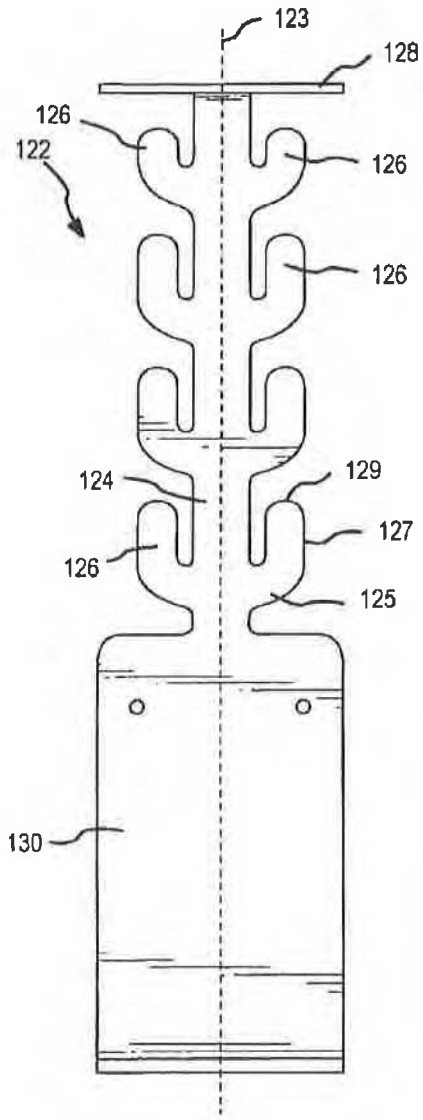
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FIG.2

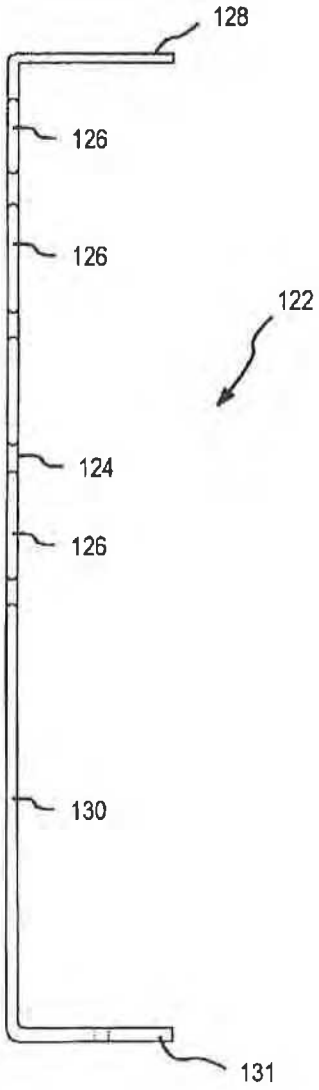
128
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FIG.3

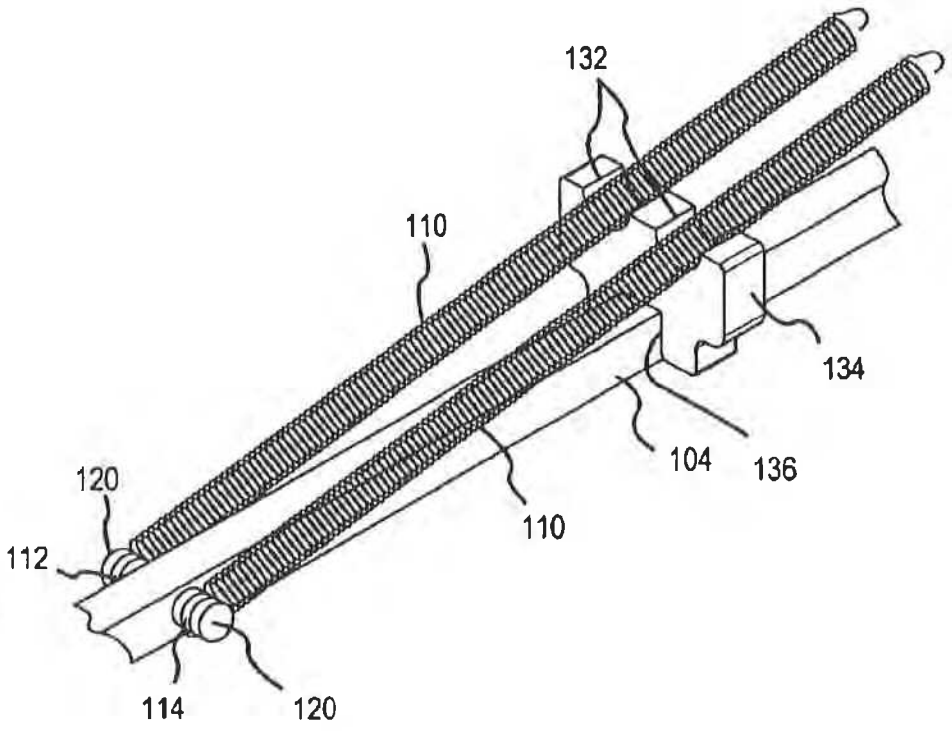

FIG.4

DEVICE FOR ATTACHING AN ELASTIC MEMBER TO AN EXERCISE APPARATUS

CROSS REFERENCE TO RELATED APPLICATIONS

This application is a continuation-in-part of application Ser. No. 10/084,277, filed Feb. 25, 2002, entitled DEVICE FOR ATTACHING AN ELASTIC MEMBER TO AN EXERCISE APPARATUS.

FIELD OF THE INVENTION

This invention relates generally to exercise equipment and, more particularly, to an anchor device for elastically resistive exercise equipment.

BACKGROUND OF THE INVENTION

Today, many types of exercise equipment are available for fitness and medical purposes. These purposes include improving cardiovascular ability, toning and strengthening muscles, controlling weight, and improving flexibility. Several types of equipment aid a user in this regard by creating some form of effective resistance against repeated body movements.

A pilates-style combo chair is one such exercise device. The frame of this device is a basic box-like structure designed to rest on a horizontal surface such as a floor. One or two pivot arms protrude out of an open front of the box-like structure. Each of the pivot arms has one end fastened to the frame of the box. A step support is mounted on the free end of each pivot arm. In order to perform various exercise movements, the user typically sits on or leans against the top of the box, stepping or pressing down on the step support with his or her foot or hand to rotate the pivot arm downward. One or more elastic members, such as coil springs, provide tension against the user's downward movements.

One end of each coil spring is attached to a pivot arm. The other end of each coil spring typically has a hook that must be inserted into the eye of an eyebolt fastened to the inside or the inner sidewall of the combo chair structure. The user must physically bend down to look under the top of the chair in order to align and engage the hook into the eyebolt. This action is awkward and inconvenient for the user as it is often difficult to attach the spring without visually watching the connection as it is being made.

Thus, there is a need for an anchor that easily and securely connects one end of an elastic member, such as a coil spring, to the frame of an exercise apparatus such that the elastic member remains securely connected to the apparatus as the tension in the elastic member is varied or modulated.

SUMMARY OF THE INVENTION

An anchor device in accordance with the present invention solves the above and other problems and has a general shape of a cactus-tree. The device has a rigid elongated vertical backbone adapted to be fastened to the frame of the exercise apparatus. Protruding from the elongated backbone is a plurality of curved, upward-pointing arms resembling the arms of a Saguaro cactus. The arms are spaced along the vertical backbone and project outward from opposite sides of the backbone. These curved arms facilitate easy connection of elastic members, such as coil springs, to the anchor device while helping to prevent the elastic members from becoming inadvertently dislodged during expansion and contraction of the elastic member. Mounting members located at the top and bottom of the vertical backbone allow the anchor device to be mounted on or within a piece of exercise equipment.

One embodiment of an elastically resistive exercise apparatus that incorporates the cactus-tree anchor device of the present invention has a box-like frame structure with parallel pivot arms mounted to the frame and protruding through an open front face of the frame. Foot bar supports are provided at the distal end of each of the pivot arms. Elastic members connect the distal end of the pivot arms to the exercise apparatus frame. Each of the elastic members has a hook or eye at one end to secure the elastic member to the pivot arm and an eye or hook attached to one of the arms of the cactus-tree anchor device fastened to the frame.

These and various other features as well as advantages that characterize the present invention will be apparent from a reading of the following detailed description and a review of the associated drawings.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. **1** is a perspective view of an exercise apparatus that incorporates an embodiment of the present invention.

FIG. **2** is a separate front view of an anchor device in accordance with an embodiment of the present invention.

FIG **3** is a separate side view of the anchor device shown in FIG. **2**.

FIG. **4** is an enlarged partial perspective view of a portion of the exercise apparatus shown in FIG. **1**.

DETAILED DESCRIPTION OF THE INVENTION

One type of exercise apparatus that incorporates an embodiment of the present invention is shown in FIG. **1**. This pilates-style combo chair **100** has a pair of split steps **102**. The split steps **102** may easily be converted into a single step by inserting a common dowel (not shown) horizontally through a bore **108** passing longitudinally through each of the two aligned split steps **102**. As shown in FIG. **1**, each step **102** is at the free distal end of a pivot arm **104**. The other end of the pivot arm **104** is rotatably connected to the base of the box-like frame structure **106** using a self-lubricating bearing hinge **105** for smooth operation and rotation of the arm **104**. The step **102** is padded and covered with a non-slip material such as rubber to minimize accidental slippage of a user's hand or foot upon the step **102**. One or more elastic members, such as coil springs **110**, each have one end **112** connected to the pivot arm **104** via a hook-and-eye bolt or a knob anchor **120**. The other end **114** of each spring **110** is fastened to a cactus-tree anchor **122** in accordance with the present invention. The cactus-tree anchor **122**, shown in FIGS. **2** and **3**, is described in detail further below.

A user typically performs various exercises by placing one or both feet upon the step **102**, supporting the remainder of his or her body on the top of the chair **100**, and performing a series of stepping movements, pushing against the steps **102**. The springs **110** provide a level of resistance that may be varied by changing the combination of springs **110**, and/or by moving the elastic members to different arms **126** of the cactus-tree anchor **122**. For example, the combo chair **100** of FIG. **1** has two knob anchors **120** on each pivot arm **104** and eight arms on each of the cactus-tree anchors **122** to which elastic member ends **114** may be connected. Either one or both of the springs **110** may be attached to the cactus tree anchor **122** on different arms **126** As each arm **126** is

at a different position with respect to the pivot of the arm **104**, the range of resistance provided by the spring **110** through the arc of motion will be different.

Those skilled in the art should appreciate that the scope of the present invention includes a wide variety of elastically resistive exercise apparatuses with elastic member anchor devices mounted in or within these apparatuses. The Pilates-style combo chair **100** is described as an exemplary piece of equipment that benefits from the present invention and should not be viewed as limiting the equipment embodied in the present invention.

FIGS. **2** and **3** depict, respectively, separate front and side views of an embodiment of the cactus-tree anchor **122** In this preferred embodiment, the anchor **122** is formed of a single piece of sheet metal such as steel. The anchor **122** has a rigid elongated backbone **124** along a central vertical axis **123** of the anchor **122**. In another embodiment of the present invention, the elongated backbone **124** may be a cylindrical rod with a substantially circular cross section. In yet another embodiment, the elongated backbone **124** may be a hollow tube with a substantially rectangular cross section. In a still further embodiment, the elongated backbone **124** may be formed in a channel shape (with a U shaped cross section) from sheet metal.

Protruding outward from the elongated backbone **124** is a plurality of arms **126**. The arms **126** protrude outward from the backbone **124** in a generally horizontal direction. Each of the arms **126** has horizontal portion **125** curving into a vertical portion **127** that is generally aligned in a vertical plane with the central vertical axis **123**. In the illustrated embodiment of the present invention, the vertical portions **127** of the arms **126** are extend parallel to the backbone **124** and are spaced therefrom by a gap sized to accommodate an end **114** of the springs **110**. In this embodiment, the elongated backbone **124** and the upward-pointing curved arms **126** resemble the trunk and arms of a Saguaro cactus. One skilled in the art should appreciate that other placements and alignments of the arms **126** are also within the scope of the present invention.

The tips **129** of the vertical portions **127** of the arms **126** may be enlarged to inhibit slippage of an attached spring **110** from around the vertical portions **127**. These enlarged tips are only one example of a feature to reduce slippage that may be employed. In another embodiment, the arms **126** may each have a slight rearward finger-like bend at the tip **129** to help prevent dislodging of the spring **110** from the cactus-tree anchor **122**. In yet another embodiment of the present invention, a knob-like protrusion or band just below the tip **129** may act as a guard to hold attached end **114** of the spring **110** in place.

The upper end of the rigid elongated backbone **124** merges into an upper mounting member **128** that extends at right angle to the backbone **124**. The upper mounting member **128** is used to connect the cactus-tree anchor **122** to the underside of the top of the frame **106** of the chair exercise apparatus **100**. Similarly, the lower end of the backbone **124** has a lower mounting member **130** used to connect to the anchor **122** to the back of the frame **106**. In one embodiment of the present invention, the mounting members **128** and **130** are flat plate portions adapted to be fastened to the top and back respectively of the exercise apparatus **100** via screws or bolts **138**. The lower mounting member **130** may also have a bottom flange portion **131** that extends at right angle over the base of the chair **100** and can be additionally bolted to the base of the chair **100** One skilled in the art should appreciate that other methods of fastening the anchor **122** in place are also within the scope of the present invention.

Referring back to FIG. **1**, the chair exercise apparatus **100** has two springs **110** attached to each pivot arm **104**. Each spring **110** has its free end **114** free to be attached to its corresponding vertical set of arms **126** on the anchor **122** corresponding to that pivot arm **104**. A user can apply either spring **114**, or both, to each pivot arm **104** by simply slipping the free end **114** of each spring **110** over one of the arms **126** of the corresponding anchor **122**. Spring tension may be changed by simply reaching behind the chair **100** and repositioning the end **114** of each spring **110** to a different anchor arm **126**. When a spring **110** is not being used, it rests in one of a pair of generally U shaped depressions or recesses **132** in a spring cradle **134** attached to the pivot arm **104**.

The cradle **134** is best shown in FIG. **4**. The cradle **134** is positioned preferably midway between the step **102** and the pivot of the arm **104**. The spring cradle **134** positions the spring **110** for ready use and prevents undesirable banging around of an idle spring **110** when only one spring **110** is being used. The cradle **134** is preferable formed from plastic or wood and has a U shaped channel bottom recess **136** that fits around three sides of the pivot arm **104**. The cradle **134** is preferably fastened to the pivot arm **104** with a hook and loop fastener fabric so as to be removable. However, the cradle **134** may alternatively be adhesively bonded, bolted or screwed to the pivot arm **104** for a more permanent installation.

It will be clear that the present invention is well adapted to attain the ends and advantages mentioned as well as those inherent therein. While an exemplary embodiment has been described for purposes of this disclosure, numerous changes may be made which will readily suggest themselves to those skilled in the art. In the illustrated embodiment **100**, each of the springs **110** has a loop at each end for attachment to the anchor **120** on the pivot arm **104** and the anchor **122**. Other arrangements at the free ends of the springs **110** may also be utilized, i.e., hooks, knobs, etc with the same result. Each of the anchor arms **126** may be shaped differently than as shown and described above. For example, the portions **127** may be curved rather than straight. They may also be bent backwards from the plane of the central backbone. The tips **129** may be enlarged. The anchor **122** may be formed of several pieces bonded together rather than formed of a single piece of sheet material. If knobs are formed on the ends **114** of the springs **110**, the ends **114** may be simply slipped into the slot formed between the backbone **124** and the arms **126** of the anchor **122**. All such changes are encompassed in the spirit of the invention as set forth in the following claims.

What is claimed is:

1. An exercise apparatus comprising:

a frame;

a pivoting member with a proximate end pivotally connected to the frame and a free distal end;

an elastic member having one end fastened to the pivoting member proximate to the distal end of the pivoting member; and

an anchor device fastening a second end of the elastic member to the frame, the anchor device comprising:

an elongated support member having a central axial portion, an upper mounting portion, and a lower mounting portion, the mounting portions being fastened to the frame; and

a first plurality of curved arms extending outward from the central axial portion wherein each curved arm has

a distal end sized to receive and retain the second end of the elastic member.

2. The exercise apparatus of claim 1 wherein the distal end of each curved arm extends substantially parallel to the central axial portion.

3. The exercise apparatus of claim 1 wherein the distal end of each curved arm includes a feature shaped to prevent the second end of the elastic member from slipping off the curved arm.

4. The exercise apparatus of claim 1 further comprising a cradle fastened to said pivot arm between the distal and proximal ends for supporting the elastic member when the elastic member is not fastened between the distal end of the pivot member and the anchor device.

5. The exercise apparatus of claim 1 wherein the first plurality of curved arms extend outward from a first side of the elongated member and the first plurality of curved arms defines a first plane passing through the central axial portion.

6. The exercise apparatus of claim 5 wherein a second plurality of curved arms extend outward from a second side of the elongated member in the plane passing through the central axial portion.

* * * * *

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U.S. Patents No. 6916279

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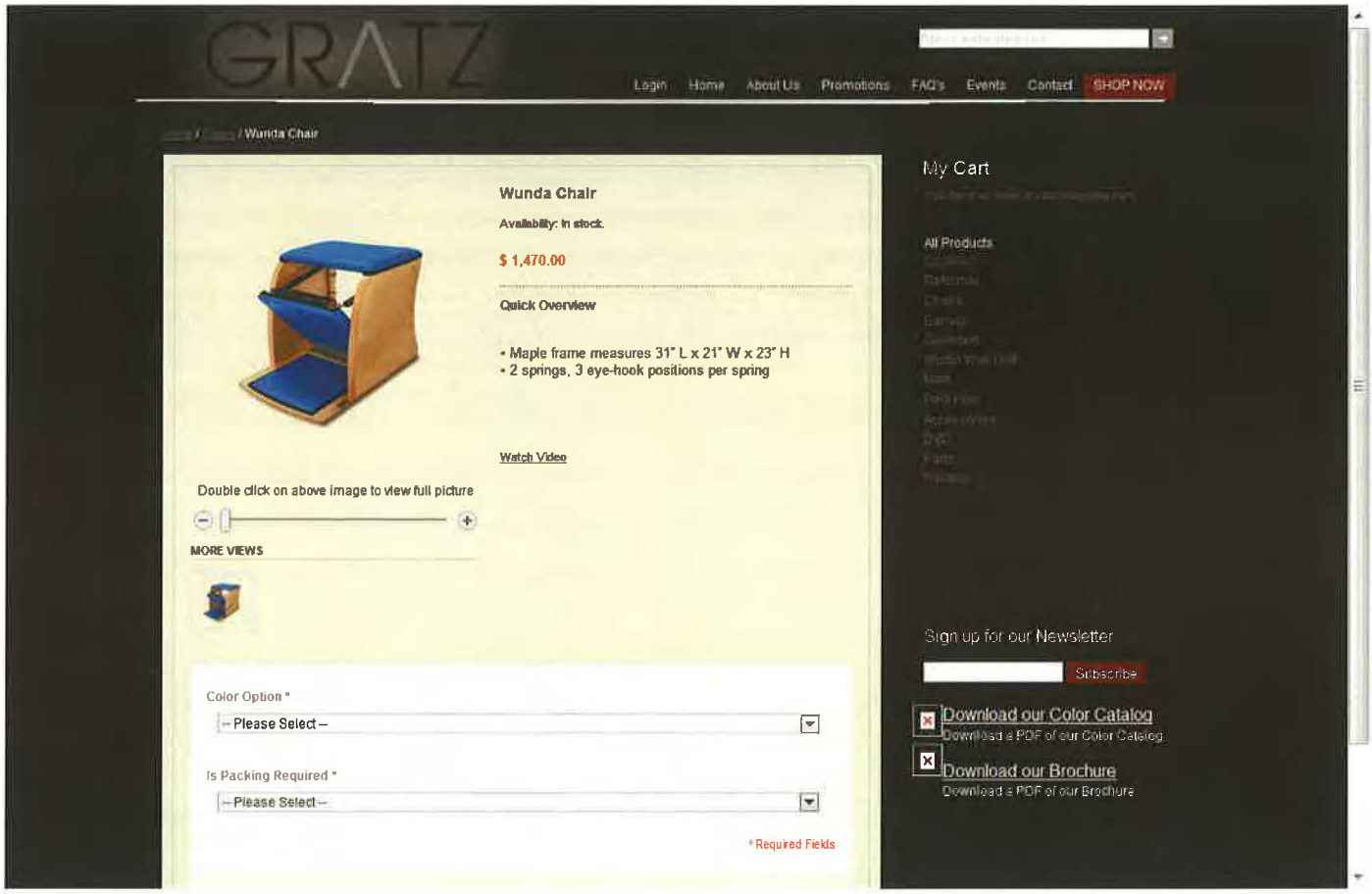
http://www.pilates-gratz.com/chairs/wunda-chair-1.html



Wunda Chair

Wood Type: Oak

Price: **$1,195.00**

Quantity: 1 Add To Cart

Description | Features | Popular Options

The Wunda Chair was created as a small apartment sitting chair that when turned upside down converted into a workout apparatus complete with 2 bed springs. While the design has evolved and we no longer use bed springs, the function and purpose has stood the test of time and remains true to form. Our Wunda Chair is an authentic version of the original that converts from a working to sitting position and has the look of fine furniture. It's beautiful wood design and versatile functioning, position it as the top choice for discriminating instructors and studio owners.

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Yoga, Pilates MEDIA - DVDs, BOOKS - Posters, Art, Prints, Cards, Games
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Pilates Wunda Chair

Product Code: rtyapiWC/44kg

Most studio equipment is now being demonstrated on YOUTUBE, please advise if you need further details.

PILATES Wunda CHAIR $796 ($875.60 inc GST)

This versatile equipment aids in rehabilitation by activating the lower back, shoulder, buttocks, transverses abdominals and pelvic region and heightens neuomuscular coordination. Stretches and re-stabilises injured or strained muscles, particularly those not easily reached by more traditional techniques.
The ultimate for space-saving Pilates.
Chair workouts focus on whole body strength (upper and lower) and conditioning and enhance stability, body control and balance.
The smooth operation padded split step adds rotational movement of the extremities.
The inbuilt springtree makes spring changes simple, safe and quick.
Adjustable height handles are removable.
Each is made individually, finish may not be exactly as per images this page.

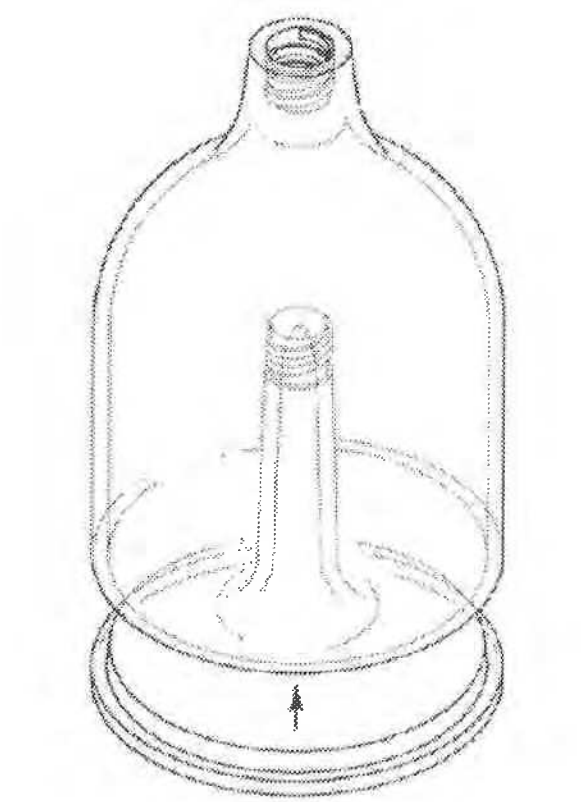
Beechwood, leatheroid, steel tube and pvc. Color tones are regularly updated and may vary slightly but it does not efect the functionality of this equipment. **Black upholstery only.**

Size: Approx 890 x 715 x 750mm , sold AS IS

EXHIBIT 11

Drawing Page
Date/Time Stamp: 05/27/2003 18:44:1

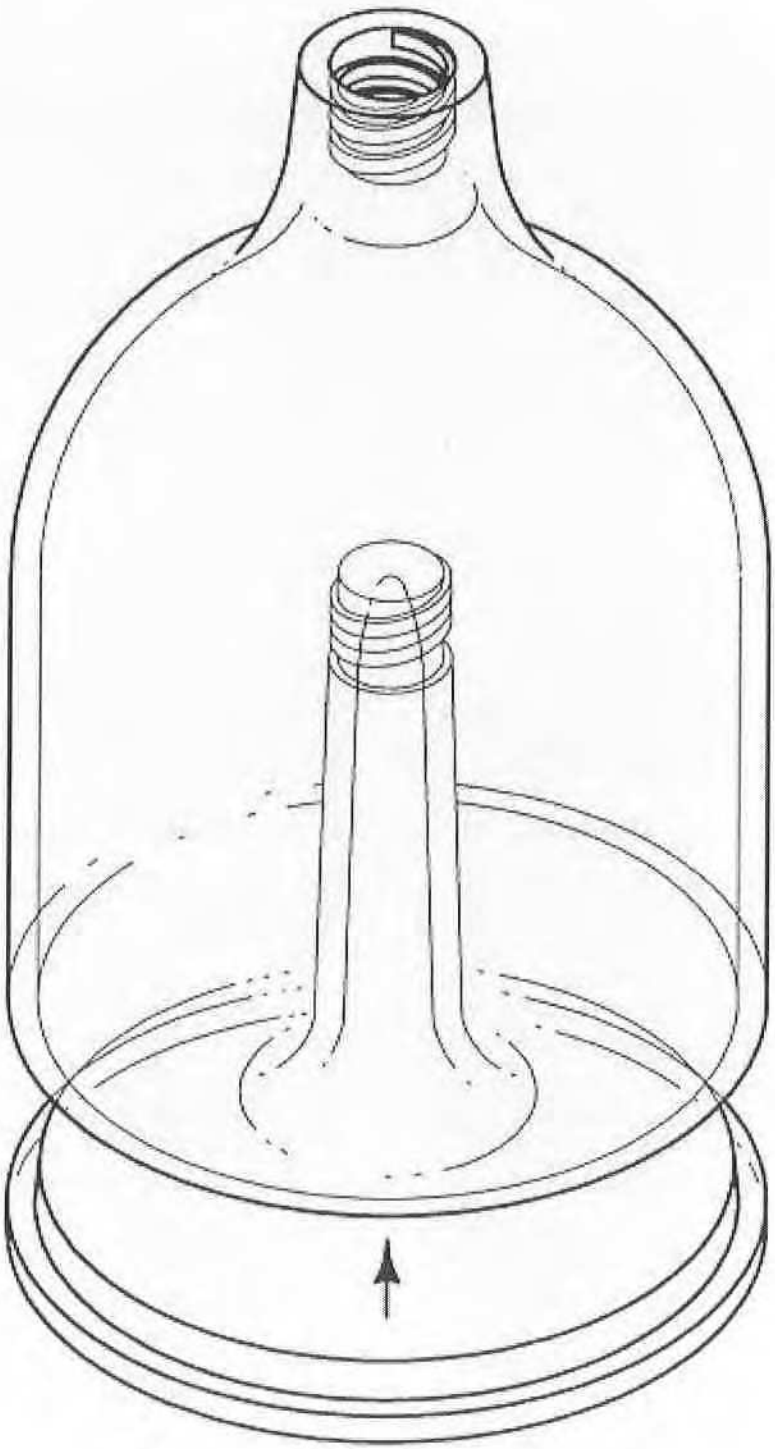
Mark:



Applicant:
GSI Sports Products, Inc.
1023 N. Pines Road
Spokane WA 99206
USA

Date of First Use Anywhere:02/10/1998
Date of First Use In Commerce:02/10/1998

Goods and Services:
Camping equipment, namely a plastic beverage glass wherein the stem and base may be nested or stored within the beverage container portion, as shown.



AUNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/254832

APPLICANT: GSI Sports Products, Inc.

78254832

CORRESPONDENT ADDRESS:
Mark W. Hendricksen
Wells St. John P.S.
601 W. First Avenue, Suite 1300
Spokane, WA 99201

RETURN ADDRESS:
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MARK:

CORRESPONDENT'S REFERENCE/DOCKET NO : GS1-102

CORRESPONDENT EMAIL ADDRESS:

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.

Serial Number 78/254832

This is responsive to the communication received January 7, 2005.

REFUSAL BECAUSE THE PROPOSED MARK IS FUNCTIONAL MADE FINAL

The Examining Attorney has refused registration on the basis that applicant's proposed mark is functional under Section 2(e)(5) of the Act, and, assuming that the configuration is nonfunctional, on the basis that applicant's product design has not acquired distinctiveness under Section 2(f) of the Act,, and is therefore merely a non-distinctive configuration which is not a mark. See Sections 1,2 and 45 of the Act.

The Trademark Act has been amended to provide that an application may be refused registration if it "comprises any matter that, as a whole, is functional." . The Supreme Court has recently discussed the issue of functionality:

> We have said, " in general terms, a product feature is functional,' and cannot serve as a trademark, if it is essential to the use or purpose of the article or if it affects the

> cost or quality of the article.'" *Qualitex Co. v. Jacobson Products Co.*, 514 U.S. 159, 165 (1995) (quoting *Inwood Laboratories, Inc. v. Ives Laboratories, Inc.*, 456 U.S. 844, 850, n. 10 (1982)). Expanding upon the meaning of this phrase, we have observed that a functional feature is one the "exclusive use of [which] would put competitors at a significant non-reputation-related disadvantage." 514 U.S., at 165.

The Federal Circuit looks at four factors in determining the issue of functionality:

> (1) the existence of a utility patent disclosing the utilitarian advantages of the design;
>
> (2) advertising materials in which the originator of the design touts the design's utilitarian advantages;
>
> (3) the availability to competitors of functionally equivalent designs; and
>
> (4) facts indicating that the design results in a comparatively simple or cheap method of manufacturing the product.

Applicant identified its goods as follows: Camping equipment, namely a plastic beverage glass wherein the stem and base may be nested or stored within the beverage container portion, as shown

Applicant describes its mark as follows: The mark consists of a distinctive configuration of a disassembled wine glass with one component within the other component.

In this case, applicant has stated that there is no utility patent. Although the existence of a utility patent could weigh against applicant in terms of showing that the configuration is de jure functional, the absence of such a patent simply has no weight in our analysis.

As to the second factor, applicant's advertising materials tout the functional advantages of its wine glass. Advertisement on Basegear: The wine glass unscrews at the top of the stem and the base snaps into the bowl for compact storage. This copy clearly indicates that the particular features of the applicant's configuration.

As to the third factor, the existence of alternative designs, the Federal Circuit has noted that the fact that other designs are available does not mean that applicant's design is not functional:

> We did not in the past under the third factor require that the opposing party establish that there was a "competitive necessity" for the product feature. Nothing in *TrafFix* suggests that consideration of alternative designs is not properly part of the overall mix, and we do not read the Court's observations in *TrafFix* as rendering the availability of alternative designs irrelevant. Rather, we conclude that the Court merely noted that once a product feature is found functional based on other considerations there is no need to consider the availability of alternative designs, because the feature cannot be given trade dress protection merely because there are alternative designs available. But that does not mean that the availability of alternative designs cannot be a legitimate source of evidence to determine whether a feature is functional in the first place.

Valu Engineering, 61 USPQ2d at 1427 (footnote omitted). The question is not whether there are alternative designs that perform the same basic function, but whether these designs work "equally well." *Valu Engineering*, 61 USPQ2d at 1427, quoting, 1 McCarthy on Trademarks and Unfair Competition, § 7:75, 7-180-1 (4th ed. 2001). The Supreme Court found that it was improper to engage in "speculation about other design possibilities, such as using three or four springs which might serve the same purpose . .

. [or] to explore designs to hide the springs." *TrafFix*, 58 USPQ2d at 1007. The presence of other designs does not indicate, therefore, that applicant's design is not de jure functional

REFUSAL BECAUSE THE DESIGN HAS NOT ACQUIRED DISTINCTIVENESS MADE FINAL

The applicant has also sought registration on the basis that its design has acquired distinctiveness. Because applicant's design is functional, any evidence of distinctiveness is of no avail to applicant in support of registration. See *TrafFix*, 58 USPQ2d at 1007 ("Functionality having been established, whether MDI's dual-spring design has acquired secondary meaning need not be considered"). Therefore, even if there were evidence sufficient to demonstrate acquired distinctiveness, it would not permit the registration of a functional design. However, for the sake of completeness, should applicant appeal and ultimately prevail on the issue of functionality, we will discuss applicant's contention that its design has acquired distinctiveness.

A product configuration is not inherently distinctive, and is entitled to registration on the Principal Register only upon a showing of acquired distinctiveness under Section 2(f). *Wal-Mart Stores, Inc. v. Samara Brothers, Inc.*, 529 U.S. 205, 54 USPQ2d 1065, 1068 (2000). Further, the burden of establishing acquired distinctiveness is upon the applicant, who must establish acquired distinctiveness by a preponderance of the evidence. *Yamaha International Corporation v. Hoshino Gakki Co., Ltd.*, 840 F.2d 1572, 6 USPQ2d 1001, 1006 (Fed. Cir. 1988). Acquired distinctiveness or secondary meaning occurs when "in the minds of the public, the primary significance of a [mark] is to identify the source of the product rather than the product itself. Wal-Mar Stores, Inc. v. Samara Bros, Inc., supra.

Even assuming the availability of alternative designs remains a factor in determining whether a configuration is de jure functional, applicant has not shown that there are alternative wine glasses which can disassembled for compact storage.

The Examining Attorney maintains that applicant's product has this shape because it works better in this shape. The advertising calling attention to functional details of applicant's product does not establish that consumers recognize the configuration (or a part thereof) as an indicator of source.

Assuming that applicant's design is determined not to be functional as a whole, the Examining Attorney contends that applicant's design has not acquired distinctiveness, and that it shares some of the same properties embodied in wine glasses of others, such as a normal stem and bowl.
The burden of proving that a mark has acquired distinctiveness is on applicant. *See Yamaha Int'l Corp. v. Hoshino Gakki Co. Ltd.,* 840 F.2d 1572, 6 USPQ2d 1001 (Fed. Cir. 1988); *In re Meyer & Wenthe, Inc.*, 267 F.2d 945, 122 USPQ 372 (C.C.P.A. 1959). Applicant must establish that the purchasing public has come to view the proposed mark as an indicator of origin. Allegations of sales and advertising expenditures cannot per se establish that a term has acquired significance as a mark. It is necessary to examine the advertising material to determine how the term is used, the commercial impression created by such use, and the significance the term would have to prospective purchasers. The ultimate test in determining acquisition of distinctiveness under Trademark Act Section 2(f) is not applicant's efforts, but applicant's success in educating the public to associate the claimed mark with a single source. *In re Packaging Specialists, Inc.*, 221 USPQ 917 (TTAB 1984); *Congoleum Corp. v. Armstrong Cork Co.,* 218 USPQ 528 (TTAB 1983); *Bliss & Laughlin Industries Inc. v. Brookstone Co.*, 209 USPQ 688 (TTAB 1981).

Applicant asserts that its mark has become distinctive based upon 6 years of use.

The claim that applicant has been using a design for a long period of substantial and exclusive use does not, by itself, demonstrate that the mark has acquired distinctiveness. See *In re Gibson Guitar Corp.*, 61 USPQ2d 1948, 1952 (TTAB 2001) (66 years of use). In addition, the mere fact that applicant has sold over 200,000 units in a recent year is not in and of itself persuasive since we have no evidence of the percentage of the market this number of baby carriers represents. *Id.* ("As for the sales of 10,000 in a two-year period, again there is no evidence to show whether this is a large number of sales of guitars vis-a-vis the sales of other companies"). Even if these sales figures were significant, it would not establish that the applicant's design was the basis for the success. *M-5 Steel Mfg. Co. v. O'Hagin's Inc.*, 61 USPQ2d 1086, 1098 (TTAB 2001)("While applicant's sales may demonstrate popularity or commercial success for its roof vents, such evidence alone does not demonstrate that the vents' designs which applicant seeks to register have become distinctive of its goods and thus function as source indicators"). That is, mere sales volume alone does not establish recognition of a mark and may be readily attributable to the desire of purchasers to acquire the product.

Also, applicant's ads do not contain any indication "that [applicant] has promoted the asserted product designs as trademarks, and we have no evidence that consumers have come to recognize applicant's designs as indications of origin." *M-5 Steel v. O'Hagin's, supra*, at 1098. It is not clear if prospective purchasers would even recognize the wine glass design as a trademark.
Applicant's showing of acquired distinctiveness is sufficient to demonstrate that, even if the product design is not considered functional, the design of the wine glass has acquired distinctiveness.

The refusal to register applicant's design on the Principal Register on the basis that it is de jure functional is continued and made Final. If the mark is not functional, the refusal to register the mark on the ground that it has not acquired distinctiveness is also continued and made Final.

NOTICE: FEE CHANGE

Effective January 31, 2005 and pursuant to the Consolidated Appropriations Act, 2005, Pub. L. 108-447, the following are the fees that will be charged for filing a trademark application:

(1) $325 per international class if filed electronically using the Trademark Electronic Application System (TEAS); or

(2) $375 per international class if filed on paper

These fees will be charged not only when a new application is filed, but also when payments are made to add classes to an existing application. If such payments are submitted with a TEAS response, the fee will be $325 per class, and if such payments are made with a paper response, the fee will be $375 per class.

The new fee requirements will apply to any fees filed on or after January 31, 2005.

NOTICE: TRADEMARK OPERATION RELOCATION

The Trademark Operation has relocated to Alexandria, Virginia. Effective October 4, 2004, all Trademark-related paper mail (except documents sent to the Assignment Services Division for recordation, certain documents filed under the Madrid Protocol, and requests for copies of trademark documents) must be sent to:

Commissioner for Trademarks
P.O. Box 1451

Alexandria, VA 22313-1451

Applicants, attorneys and other Trademark customers are strongly encouraged to correspond with the USPTO online via the Trademark Electronic Application System (TEAS), at http://www.uspto.gov/teas/index.html.

Robert Clark
Examining Attorney
Law Office 108
571-272-9144
fax: 571-273-9108

HOW TO RESPOND TO THIS OFFICE ACTION:

- ONLINE RESPONSE: You may respond formally using the Office's Trademark Electronic Application System (TEAS) Response to Office Action form (visit http://www.uspto.gov/teas/index.htm and follow the instructions, but if the Office Action issued via email you must wait 72 hours after receipt of the Office Action to respond via TEAS).
- REGULAR MAIL RESPONSE: To respond by regular mail, your response should be sent to the mailing return address above and include the serial number, law office number and examining attorney's name in your response.

STATUS OF APPLICATION: To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at http://tarr.uspto.gov.

VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applic can be viewed and downloaded online at http://portal.uspto.gov/external/tow.

GENERAL TRADEMARK INFORMATION: For general information about trademarks, please visit the Office's website at http://www.uspto.gov/main/trademarks.htm

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.

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Last updated at 12:00AM EST on Saturday, February 05, 2005

Product Results

Results **1 - 15** out of **58** for **GSI Outdoors Sports & Outdoors**. (About this page...)

GSI Outdoors Sports & Outdoors

Refine Results for **GSI Outdoors Sports & Outdoors**

You refined by:
GSI Outdoors [undo]

Camping & Outdoors (46)
Fan Gear & Memorabilia (1)

Store
Amazon.com (14)
Campmor Inc. (25)
Sears (4)
BaseGear.com | Serious Outdoor Gear (2)
REI.com (1)

Price
From $ To $
Refine

Sort by: **Top Results** | Price

View: **List** | Grid

Check at least 2 products to compare side by side.

GSI Outdoors Pioneerware SS 12pc Table
GSI Pioneerware SS 12pc
$34.99 at Sears
BUYER PROTECTION
Save and Share | Compare Products

GSI Outdoors Pioneerware SS 16pc Table
Pioneerware SS 16pc
$69.99 at Sears
BUYER PROTECTION
Save and Share | Compare Products

GSI Outdoors Hard Anodized Extreme 14 Fry
Hard Anodized Extreme 14
$44.99 at Sears
BUYER PROTECTION
Save and Share | Compare Products

GSI Outdoors Extreme Mess Kit 6pc
The GSI Outdoora Extreme 6-piece mess kit features a pot and pan/lid constructed with a high-performance, hard-anodized design that combines the lightness and heat transfer
$24.99 at Sears
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Group Products
One Product Per Store
All Products

Get product ratings from other Yahoo! shoppers

Click on the red stars to see what other Yahoo! shoppers thought of the product.

User Rating
Not Rated

Save and Share | Compare Products

GSI Outdoors 32 oz. H2O! Lexan Bottle (Bryce Canyon Red) - Model 73381

Virtually unbreakable Lexan resin bottle Ergonomic grip design Tapered base for ease of storing in pockets Lifetime warranty leak-proof bottle under normal conditions 1

Description - Learn More

Available at Trading Post Supply

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BUYER PROTECTION

User Rating
Not Rated

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GSI Outdoors 32 oz. H2O! Lexan Bottle (Zion Yellow) - Model 73384

Virtually unbreakable Lexan resin bottle Ergonomic grip design Tapered base for ease of storing in pockets Lifetime warranty leak-proof bottle under normal conditions 1

Description - Learn More

Available at Trading Post Supply

$5.81 at 2 stores Compare Prices

BUYER PROTECTION

User Rating
Not Rated

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GSI Outdoors 32 oz. H2O! Lexan Bottle (Shenandoah Purple) - Model 73385

Virtually unbreakable Lexan resin bottle Ergonomic grip design Tapered base for ease of storing in pockets Lifetime warranty leak-proof bottle under normal conditions 1

Description - Learn More

Available at Trading Post Supply

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GSI Web Clip Bottle Top - Water Bottles, Coolers and Containers Container Accessories

It's a snap to replace your GSI bottle top with a fresh, new lid. Clip fastener lets you attach your bottle to any point on your pack. Nylon strap dangles down the side for

$1.50 at REI com

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GSI Outdoors 12 in. Cast Aluminum Dutch Oven

Perfect for stewing, boiling, steaming, baking, roasting, and frying. They will not rust, are easy to clean and are one third the weight of cast iron. 12 in. dia. with legs.

$49.99 at Campmor Inc.

BUYER PROTECTION

BUYER PROTECTION

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GSI Outdoors Lexan Wine Glass

Add elegance to your camp or cabin! Unique design unscrews at the midpoint of the stem so that base can be compactly snapped into the bowl for storage. Super lightweight,

$4.99 at Campmor Inc ★★★★½

BUYER PROTECTION

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GSI Outdoors Cutting Board Small

Lightweight and compact enough for backpacking, but durable enough for everyday use. Made of rugged polyethylene. Color: White. Size: 9.75 in. x 5.75 in. x .25 in. Wt. 9.5

$1.99 at Campmor Inc ★★★★½

BUYER PROTECTION

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GSI Outdoors Cutting Board Large

Lightweight and compact enough for backpacking, but durable enough for everyday use. Made of rugged polyethylene. Color: White. Size 9 in. x 16 in. x .25 in. Wt. 21

$3.99 at Campmor Inc. ★★★★½

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GSI Outdoors 3 Cup Stainless Steel Coffee Percolator

For backpacking, camping, picnics and home. Seamless construction protects from bursting, withstands greater impact and works with the heavy-gauge stainless steel to reduce

$15.99 at Campmor Inc. ★★★★½

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GSI Outdoors 8-inch Gourmet Frypan With Extreme Non Stick

The Camp Gourmet Frypan features a unique folding handle that tapers inside the pan for compact packing then snaps into position for secure positive stability while cooking.

$13.99 at Campmor Inc. ★★★★½

BUYER PROTECTION

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GSI Outdoors 10-inch Gourmet Frypan With Extreme Non Stick

The Camp Gourmet Frypan features a unique folding handle that tapers inside the pan for compact packing then snaps into position for secure positive stability while cooking.

$17.99 at Campmor Inc. ★★★★½

BUYER PROTECTION

☑ BUYER PROTECTION

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  www.expertrating.com
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REI.com (1)

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From $ To $
Refine

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Stemware & Decanters

We offer the widest selection of glassware for the Wine Enthusiast. You'll find world famous Riedel glassware including the all-new Riedel 'O' as well as break-resistant Tritan stemware, Spiegelau and our own extremely affordable Enthusiast Stemware line.

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The finest stemware ever! Save Over 29%!

In an era of clunky, machine-made stemware, here are hand-blown, top-of-the-line masterpieces from the acknowledged leader. When guests see these graceful, super-thin Sommelier beauties on the table, they know that what follows will also be extraordinary.

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Tritan Crystal Stemware

Now Available In Two Destinctive Lines

Entertain without the fear of broken glasses. Elegant enough for fine dinner parties yet durable enough for

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enough for fine dinner parties yet durable enough for everyday use. Tritan Crystal stems are the most break-resistant glasses in the world and will retain their diamond like brilliance for many years.

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Crystal Care

Riedel 'O' Collection

Modern elegance meets everyday functionality

Trusted as the vanguards of high-end glassware, Riedel has brought a revolutionary new twist to wine glasses – glassware without stems! The new Riedel O's are lightweight, impeccably constructed and are ideal for everyday use. Plus they're so unique and versatile, they'll look great on any tabletop or cradled in the palm of your hand.

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Brandy Warmer Set
$15.95

Three Piece Decanting Set

Our Best Decanters on Sale!

Enjoy the ritual of uncorking, decanting and savoring your favorite wine with these elegant decanters. Whether it's to serve young or mature wines, choose from an assortment of hand-made pieces that will properly aerate your wines to ensure the their best possible taste and bouquet.

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$7.95-$8.95

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GSI Lexan Wine Glass

This extremely durable GSI Lexan Wine Glass will add an air of elegance to your next camping, boating, or backpacking trip. The wine glass unscrews at the top of the stem and the base snaps into the bowl for compact storage. Holds 10 ounces of your favorite vino.

Weight: 3.1 ounces
Height: 6.63 inches
Capacity: 10 fluid ounces

GSI-WINE List price: $5.95 Our price: **$4.95** Add to Cart

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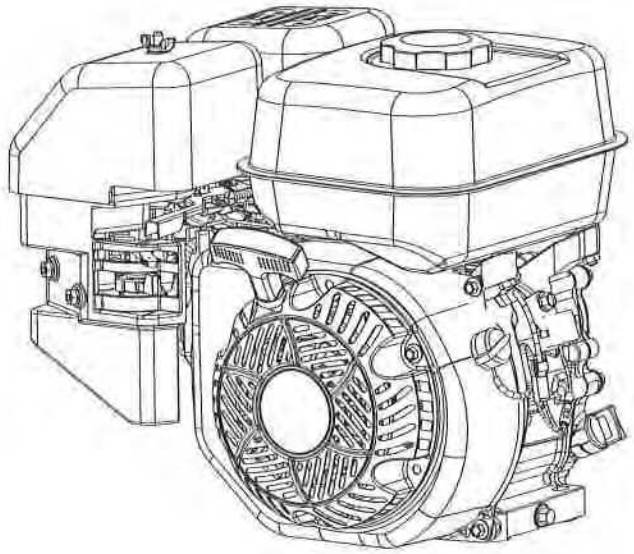
EXHIBIT 12

KOHLER Courage®

SH265

Service Manual



IMPORTANT: Read all safety precautions and instructions carefully before operating equipment. Refer to operating instruction of equipment that this engine powers.

Ensure engine is stopped and level before performing any maintenance or service.

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